



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application. The tenants applied for a Monetary Order to recover the security deposit. The tenants had also applied for a Monetary Order for money owed or compensation for damage or loss under the Act, regulations or tenancy agreement but withdrew this section of their claim during the hearing

The tenants and landlords agents attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord permitted to keep all or part of the security deposit?

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order to recover the security deposit

Background and Evidence

The parties agree that this tenancy started on September 06, 2013 for a month to month tenancy. Rent for this unit was \$1,460.00 per month which included \$60.00 for water. The tenants paid a security deposit of \$700.00 on August 27, 2013. The tenancy ended on December 01, 2013. The parties attended a move in inspection of the unit at the start of the tenancy however the move out inspection was completed in the tenants' absence. The tenants provided a forwarding address in writing on their notice to end tenancy on November 21, 2013.

The landlord testifies that the tenants were given two opportunities to attend a move out inspection on November 30, 2013. One opportunity was for 8.00 a.m. and one was for 10 a.m. The female tenant EF called the landlords agent DS on November 29, 2013 and scheduled the move out inspection for 10.00 on November 30, 2013. The landlord testifies that this appointment was then entered into the landlord's agent KK book so she knew when to do the inspection. The landlord's agent testifies that they did not issue the tenants with a Final Opportunity for Inspection Notice as the tenants had agreed upon the 10.00 time slot.

KK testifies that when she arrived at the unit at 10.00 on November 30, 2013 she waited for five minutes but as neither of the tenants appeared the move out inspection was started in the tenants' absence. KK testifies that she completed the inspection by 10:20a.m.; however no one for the tenants appeared during that time. The landlord's agent DS testifies that the tenants came back to the unit on December 02, 2013 and wanted to do the inspection however by this time the landlords had already had the unit cleaned.

KK testifies that it was documented on the inspection report that the unit had not been thoroughly cleaned and the carpets were not clean despite the tenants leaving a receipt for a rented carpet cleaning machine. KK testifies that the unit required additional cleaning for the walls, the flooring, the window coverings, the woodwork and trim, the appliances, the toilets in both bathrooms and the sinks. This cleaning was completed by the landlord's cleaners and they took 2.5 hours at \$35.00 per hour. The landlords have provided an invoice and seek to recover 87.50.

KK testifies that the carpets had some staining, lint and gravel specks on them and did not look clean. The living room carpet, the stairs, the upper hallways and the upper bedroom carpets all had to be professionally cleaned. The landlord has provided an invoice for this work and seeks to recover \$210.00.

The landlord seeks an Order to keep part of the tenants security deposit to an amount of \$297.50 for the cleaning , carpet cleaning and filing fee.

The tenants dispute the landlords claim concerning the move out inspection. The tenant EF testifies that she called the landlord's agent and choose the 8.00 a.m. time slot to do the move out inspection on November 30, 2013. The tenant testifies that she waited at the unit for the landlord but no one appeared. The tenant testifies that she did not have a contact number to call the landlord. The tenant MG testifies that they tried to reschedule the inspection for December 02, 2013 however the landlord had already organised the cleaners. When they spoke to the landlord about this mix up in the times they were told that they did not know who had taken the phone message from EF. Now the landlords are saying it was the landlords agent DS. The tenants testify that the landlord did not provide the tenants with a second opportunity to do the inspection.

The tenants' dispute the landlords claim concerning cleaning of the unit. The tenants testify that they had left the unit clean prior to moving out. Everything in the unit including the walls had been wiped down; the appliances had been moved and cleaned underneath. There were some marks on the walls in the bathroom from moisture which

could not be removed. The tenants testify that they had hired a carpet cleaner and cleaned the carpets twice. The carpets were stained and burnt at the start of the tenancy as indicated on the move in inspection.

The tenant testifies that the day the carpet cleaner was there the tenant was in another property close by and saw that the carpet cleaner was in and out in 15 minutes. The tenants question how much cleaning was done in that time. The tenants dispute that any gravel or lint was left on the carpets. The tenants testify that they had left their paperwork on the counter in the kitchen to show the landlord that the tenants had cleaned the carpets. The tenants seek to recover all their security deposit from the landlord.

The landlords agent KK testifies that the tenants had done some cleaning in the unit however there were black streak marks on the walls and floor and the extra cleaning required was detail cleaning.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the landlords claim for cleaning; the parties contradict each other's testimony concerning the time arranged to do the move out inspection. However I have no evidence from either party to corroborate what time was actually arranged and that it was not simply a mix up. However, as the landlord has the burden of proof in this matter as the person making the claim, the landlord would be required to provide corroborating evidence to satisfy the burden of proof. As I have insufficient corroborating evidence to support which of these times was actually arranged it becomes one persons word against that of the other and the burden of proof is therefore not met. With this in mind I find the landlord should have attempted to contact the tenants to corroborate the time arranged to do the inspection and then offer an alternative time on the approved form and a final opportunity for inspection prior to having any work completed in the unit so the tenants could attend the inspection on an

alternative date and time and agree or disagree with the landlords findings.

Consequently it is my decision that the landlord failed to provide a second opportunity for the tenants to attend an inspection and therefore I can place little weight as to the condition of the rental unit especially when the report is disputed by the tenants. I am therefore not satisfied that the landlord has sufficient corroborating evidence such as photographic evidence to support the comments made on the move out report.

Under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards" throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. Consequently I must dismiss the landlords claim for cleaning and carpet cleaning of the unit.

As I have found the landlord has insufficient evidence to support their claim I must also dismiss the landlord claim to keep part of the security deposit and to recover the filing fee.

I therefore uphold the tenants claim to recover the security deposit. The tenants are entitled to a Monetary Order for \$700.00 pursuant to s. 38(6)(b) of the *Act*.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply

I HEREBY FIND in favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$700.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 28, 2014

Residential Tenancy Branch

