



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDWEST PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for damage to the unit, site or property, for authorization to keep all or part of the tenants' security deposit and pet damage deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide her evidence orally. A summary of that evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice of Hearing") and Application for Dispute Resolution (the "Application") were considered. The agent testified that the Notice of Hearing, Application, and evidence were served on the tenants by registered mail on December 10, 2013. The agent provided two registered mail tracking numbers in evidence and confirmed that the names and addresses matched the names of the two respondent tenants and their forwarding address provided by the tenants as their forwarding address on the condition inspect report. The condition inspection report was also submitted in evidence. The agent stated both registered mail packages were successfully delivered to the tenants on December 18, 2013, according to the Canada Post registered mail tracking website.

The agent stated that the landlord served additional evidence by registered mail on March 1, 2014, and included two additional registered mail tracking numbers in evidence. The agent stated that neither of those packages was returned to the landlord. Section 90 of the *Act* indicates that documents served by registered mail are deemed

served five days after they are mailed. I accept that the tenants were deemed served with the landlord's additional evidence as of March 6, 2014.

Preliminary and Procedural Matters

At the outset of the hearing, the agent stated that she had attempted to amend the landlord's monetary claim from \$2,452.84 to \$5,145.22 through the submission of evidence. As the landlord did not amend their Application for Dispute Resolution, I find that the tenant is unable to amend their monetary claim through the submission of evidence, which would be prejudicial to the tenants. Therefore, the agent stated that she wished to proceed with the landlord's original application in the amount of \$2,452.84.

During the hearing, the agent then requested to reduce the landlord's monetary claim from \$2,452.84 to \$1,962.96. I find that such a reduction in the landlord's claim does not prejudice the tenants and permitted the reduction in the landlord's claim as a result. The agent stated that she was withdrawing the carpet replacement portion of the landlord's claim as the carpets were cleaned instead of replaced, which is reflected in the new amount being claimed, \$1,962.96.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the tenancy agreement in evidence. A fixed term tenancy began on February 1, 2013 and was scheduled to end on January 31, 2014. Monthly rent of \$1,309.00 was due on the first day of each month. A security deposit of \$500.00 and a pet damage deposit of \$500.00 were paid by the tenants at the start of the tenancy, which the landlord continues to hold.

The landlord's reduced monetary claim is comprised of the following:

Item 1. Suite cleaning	\$157.50
Item 2. Lease break fee	\$1,000.00
Item 3. Carpet cleaning	\$131.25

Item 4. Recovery of early move-in incentive	\$717.84
<i>Less credit to tenants for pro-rated rent for tenants moving out one day early in the month of November 2013</i>	-(43.63)
TOTAL	\$1,962.96

Regarding the landlord's first item being claimed, the landlord is claiming \$157.50 for suite cleaning, and referred to the condition inspection report submitted in evidence and photos. The agent also referred to a suite cleaning invoice in the amount of \$312.50 submitted in evidence and stated that the amount being claimed was \$157.50 as that was the amount specified by the landlord on the outgoing condition inspection report before taxes. The tenants wrote on the condition inspection report that they did not agree with the outgoing condition inspection report for the following reason, "brought 8 lightbulbs".

Regarding the landlord's second item being claimed, the landlord has claimed \$1,000.00 for a "lease break fee". Section 6.1 of the tenancy agreement submitted in evidence reads as follows:

"...If, subject to termination in accordance with this Agreement or the Act, the Tenant ends the fixed term tenancy before the Expiry Date, the Landlord may treat this Agreement as being abandoned pursuant to the Act. In such an event, the sum of \$1,000.00 will be paid by the Tenant to the Landlord as liquidated damages, and not as a penalty. Liquidated damages cover the Landlord's cost of re-renting the Premises and must be paid in addition to any other amounts owed by the tenant, such as unpaid rent or costs relating to damage to the Premises or Residential Property..."

[reproduced as written]

The agent provided seventeen dates of when rental unit was showed to prospective tenants. The agent stated that the rental unit was eventually re-rented to new renters effective February 1, 2014.

Regarding the landlord's third item being claimed, the landlord has claimed \$131.25 for carpet cleaning. The agent submitted an invoice in evidence which supports that carpet cleaning of \$125.00 plus taxes for a total of \$131.25 was paid to clean the carpets and that the tenants left the carpets dirty when they vacated the rental unit. The agent referred to photos submitted in evidence which she stated supports that the carpets were dirty at the end of the tenancy.

Regarding the landlord's fourth item being claimed, the landlord has claimed for the recovery of the \$717.84 early move-in incentive. The tenancy agreement submitted in evidence reads "A pro-rated rental amount of \$717.84 has been paid from 1/15/2013 (mm/dd/yyyy) to 1/31/2013 (mm/dd/yyyy)". The agent referred to the "Incentive Schedule "C.1" in evidence which reads in part regarding the amount of \$717.84:

"....In the event the rent is not paid in full in advance of the first day of each month, this Addendum becomes null and void, and the rental rate as per the Lease Agreement will become effective immediately and all previous discounts given during this agreement will also become payable in full immediately..."

[reproduced as written]

The agent explained that the credit to the tenant of \$43.63 was being granted to the tenants as the tenants vacated the rental unit on November 29, 2013, which was one day early for the month of November 2013.

Analysis

Based on the undisputed testimony of the landlord provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage.

Finally it must be proven that the landlord did everything possible to minimize the damage or losses that were incurred.

Item 1 – The landlord has claimed \$157.50 for suite cleaning. I find the condition inspection report, photos and suite cleaning invoice supports this portion of the landlord's claim. Section 37 of the *Act* states:

Leaving the rental unit at the end of a tenancy

37 (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Given the above, I find the landlord has met the burden of proof in proving that the tenants breached section 37 of the *Act* and owe **\$157.50** for suite cleaning as claimed.

Item 2 – The landlord has claimed \$1,000.00 for a “lease break fee”. Monthly rent is only \$1,309.00 per month. Residential Tenancy Branch Policy Guideline #4 – Liquidated Damages states that a sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach. I find the amount of \$1,000.00 for liquidated damages to be extravagant and excessive compared to the monthly rent, which is \$1,309.00.

Therefore, I dismiss this portion of the landlord's claim as the amount being claimed for liquidated damages has been determined as extravagant and excessive compared to the monthly rent of the rental unit, and due to insufficient evidence to support that the amount of \$1,000.00 was an actual pre-determination of the actual costs related to re-renting the rental unit.

Item 3 - The landlord has claimed \$131.25 for carpet cleaning. I find that the landlord's evidence supports the amount being claimed and that \$125.00 plus taxes for a total of \$131.25 was paid to clean the carpets and that the tenants left the carpets dirty when they vacated the rental unit. The agent referred to photos submitted in evidence which I find does support that the carpets were left dirty by the tenants at the end of the tenancy. Given the above, I find the landlord has met the burden of proof in proving that the tenants breached section 37 of the *Act* and owe **\$131.25** for carpet cleaning as claimed.

Item 4 - The landlord has claimed for the recovery of the \$717.84 early move-in incentive. The tenancy agreement submitted in evidence reads "A pro-rated rental amount of \$717.84 has been paid from 1/15/2013 (mm/dd/yyyy) to 1/31/2013 (mm/dd/yyyy)". The agent referred to the "Incentive Schedule "C.1" in evidence which reads in part regarding the amount of \$717.84:

"....In the event the rent is not paid in full in advance of the first day of each month, this Addendum becomes null and void, and the rental rate as per the Lease Agreement will become effective immediately and all previous discounts given during this agreement will also become payable in full immediately..."

[reproduced as written]

Section 6(3) of the *Act* states in part that a term of the tenancy agreement is not enforceable if the term is inconsistent with the *Act* or regulations, unconscionable or not expressed in a manner that clearly communicates the rights and obligations under it. Based on the above, I find that the "Incentive Schedule" described above is not enforceable as the wording is not clear and is confusing by referring to rent not being paid in full in advance of the first day of each month and including wording related to previous discounts given becoming payable in full immediately. Therefore, I dismiss this portion of the landlord's claim due to an unenforceable and confusing term, and insufficient evidence.

As described above, the agent explained that the landlord was providing the tenants with a credit in the amount of \$43.63 as the tenants vacated the rental unit on November 29, 2013, which was one day early for the month of November 2013. Given this credit by the landlord, I have offset that amount from the landlord's claim below.

As some of the landlord's claim had merit, **I grant** the landlord the recovery of the filing fee of **\$50.00**.

I find that the landlord has established a total monetary claim in the amount of **\$295.12** pursuant to section 67 comprised of \$157.50 for suite cleaning, \$131.25 for carpet cleaning, plus the \$50.00 for the filing fee, and less the \$43.63 credit to the tenants from the landlord, described above. The remainder of the landlord's application is dismissed, without leave to reapply.

The landlord continues to hold the tenants' security deposit of \$500.00 of pet damage deposit of \$500.00, which has accrued \$0.00 in interest since the start of the tenancy. I find the total monetary award of **\$295.12** meets the criteria under section 72(2)(b) of the

Act to be offset against the tenants' security deposit and pet damage deposit. **I ORDER** the landlord to retain \$295.12 of the tenants' \$500.00 security deposit in full satisfaction of the landlord's monetary claim, and **I ORDER** the landlord to immediately return the tenants' full pet damage deposit of \$500.00, plus the \$204.88 remaining balance from the tenants' security deposit, for a total of \$704.88 in combined deposits, to the tenants. **I grant** the tenants a monetary order under section 67 for the balance due to the landlord by the tenants in the amount of **\$704.88**. Should the landlord fail to pay the tenants as ordered, the tenants must serve the landlord with the monetary order, and may enforce the monetary order in the Provincial Court of British Columbia (Small Claims).

Conclusion

The landlord has established a total monetary claim in the amount of \$295.12. The landlord has been ordered to retain \$295.12 of the tenants' security deposit in full satisfaction of the landlord's claim. The tenants have been granted a monetary order under section 67 for the balance due to the landlord by the tenants in the amount of \$704.88. Should the landlord fail to pay the tenants as ordered, the tenants must serve the landlord with the monetary order, and may enforce the monetary order in the Provincial Court of British Columbia (Small Claims).

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: April 22, 2014

Residential Tenancy Branch

