



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Slegg Realty (Landlord's Agent) per
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for losses resulting from the tenancy; for late rent payment fee; for damage to the property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on November 19, 2013 for a 6 month and 12 day fixed term tenancy beginning on January 1, 2014 for a monthly rent of \$1,850.00 due on the 1st of each month with a security deposit of \$925.00 and a pet damage deposit of \$925.00 paid. The agreement contains an addendum of 1 page with 12 items. Clause 6 of the addendum states the tenant must pay a \$25.00 fee for late payment of rent;
- A copy an agreement between the owner of the rental property and the agent for the landlord. Highlighted is a clause under the heading of "Compensation of the Agent" that states: "No fees will be charged by the Agent to the Owner during a period of vacancy. A placement fee equal to \$500.00 (plus applicable taxes) will be deducted from rental income upon placement of a new Tenant";

- Copies of a Condition Inspection Report completed when the tenants moved into the rental unit and one signed by both parties at move in and move out. The date of the move in inspection is listed at January 4, 2014 but no date is given for the move out inspection.
- A copy of an eBay receipt for a washing machine door seal listing at \$113.87 USD – manually computed at \$122.00 CDN; installation charge of \$55.00 for a total paid of \$177.00.

The tenants do not dispute the landlord's claim for \$25.00 for the late payment of rent.

The landlord's agent acknowledges that the tenancy agreement does not have a liquidated damages clause and as such he is not seeking compensation for liquidated damages. Rather the landlord seeks a loss incurred as a direct result of the tenants' failure to complete the fixed term of the tenancy. The loss is in the amount of \$525.00 as per the contract between the landlord and the property management company.

The agent submits the landlord would not have had to pay this fee at the tenants stayed until the end of the fixed term. I noted during the hearing that the tenancy required the tenants to vacate the rental unit at the end of fixed term and as such the landlord would have been required to pay this fee for the next tenants had the unit been re-rented.

The agent testified that the landlords would not have placed new tenants in the unit because they never rent the unit out for a period of time over the summer months. He submitted that they live outside of the country and for the past 50 years they stay in the unit from mid July to the end of August each year.

The agent's position is that had the tenant's not moved out of the rental unit the landlords would not have had to place a new tenant in the unit for the period between April 15, 2014 and July 12, 2014.

The tenants submit that they were unaware of any such fee that the landlord was required to pay. The tenants submit that they had been attempting to reach an agreement with the landlord to mutually end the tenancy in a manner that would ensure no expense to either party.

The landlord also seeks compensation for the replacement of a seal from the washing machine door. The landlord submits the seal was not damaged in any way prior to the start of the tenancy. The Condition Inspection Reports submitted do confirm no damage to the washing machine. However, the agent submits the damage was found later.

The tenants submit that when they completed the move in condition inspection the washing machine door was not opened so they were not aware of any damage to the seal when they signed the Condition Inspection Report. The landlord testified that he

could not confirm one way or another if the washing machine door had been opened and inspected during the move in inspection.

The tenants submit that they notice the stain on the seal when she first used the washing machine but because she was familiar with the problems associated with front load washing machines she thought was not something she needed to report to the landlord.

Analysis

As the tenants do not dispute the landlord's claim for the \$25.00 late payment fee I find the landlord is entitled to this amount.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I accept the tenancy ended prior to the fixed term as a result of actions by the tenants contrary to the requirements under Section 45(2) of the *Act* that stipulate that a tenant may not end a fixed term tenancy before the end dated noted in the tenancy agreement.

I also accept that as a result the landlords incurred an additional loss for the placement of a new tenant and that they would not have incurred this cost if the tenants had maintained the tenancy for the full length of the fixed term.

However, from the testimony of the parties and the evidence submitted, I find the tenants were never informed that if they ended the tenancy prior to the end of the fixed term the landlord would incur any additional costs other than the potential for lost rent.

As a result, I find the tenants may have made a different decision about ending the tenancy if they had been made aware that the landlord would incur this cost or that the landlord would seek compensation from the tenants for it.

I find by the landlord failing to advise the tenants of the potential of this claim the landlord failed to take all reasonable steps to mitigate this loss and the tenants cannot now be held responsible for it. I dismiss this portion of the landlord's claim.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

In relation to the landlord's claim regarding the washing machine door seal, I find that the Condition Inspection Report that was completed at the start of the tenancy confirms the condition of the rental unit and all appliances at the start of the tenancy. When signing such a document it is incumbent upon both parties to ensure they are satisfied with the condition as recorded.

While I accept that door to the washing machine may not have been opened during the move in inspection, I note it was the tenants' obligation to ensure that they were satisfied with the condition of the washing machine recorded as fine. If the tenants later found out that it was not fine they were obliged to advise the landlord at that time and to have the Report revised or amended.

As no amendment to the Report was requested I find the landlord has established that there was no damage to the washing machine at the start of the tenancy. Therefore, I accept that the damage resulted during this tenancy and the tenants are responsible for the replacement of the seal. I also accept the landlord has established the value of this replacement to be \$177.00.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$227.00** comprised of \$25.00 late payment fee owed; \$177.00 washing machine door seal replacement; and \$25.00 of the \$50.00 fee paid by the landlord for this application, as he was only partially successful in his claim.

I order the landlord may deduct this amount from the security deposit held in the amount of \$925.00 in satisfaction of this claim. I grant a monetary order to the tenants for the return of the balance of the security deposit in the amount of **\$698.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced 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: September 8, 2014

Residential Tenancy Branch

