



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORP. D/B METROPOLITAN TOWERS
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNDC, MNSD, MND, MNR, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent, liquidated damages, carpet replacement, cleaning and key replacement. The landlord is seeking to retain the security deposit in partial satisfaction of the claim.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and make submissions during the hearing. I have considered all of the evidence properly served and the verbal testimony given by the parties during the hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for rent and damages?

Background and Evidence

The landlord testified that the tenancy began as a one-year fixed term tenancy on February 1, 2014. The rent was \$1,550.00 and a security deposit of \$775.00 was paid. The landlord testified that the tenant gave notice to move and it was agreed by the parties that they would vacate when a new tenant was found. The tenancy ended on June 26, 2014.

The landlord testified that, although there were 2 co-tenants on the lease, the landlord accepted half of the monthly rent drawn from each one of the co-tenant's accounts separately.

The landlord testified that the tenants owe unpaid arrears of \$790.00 for the month of May 2014 and \$790.00 for the month of June 2014.

According to the landlord, there were no problems receiving the \$790.00 portion of rent from one of the co-tenants, CJ, for his half of the rent. However, the May 2014 rent cheque for \$790.00 from the other co-tenant, SI, was returned NSF.

The landlord submitted a copy of their own bank records, pointing out that the statement confirms that the May cheque for \$790.00 from SI did not clear the bank. The landlord seeks compensation for the \$790.00 left unpaid for May 2014.

The tenant, SI, argued that the bank had debited his bank account twice in error for the \$790.00 owed to the landlord for May 2014, resulting in a debit of \$1,580.00. The tenant testified that the bank then reversed both payments, crediting the tenant's account with a total of \$1,580.00. The tenant stated that after all this was done, the account was debited \$790.00 on May 2, 2014 paid to the landlord. The tenant submitted a bank statement confirming that the above transactions were clearly documented on the statement.

The landlord testified that co-tenant CJ paid his half of the rent for June 2014, in the amount of \$790.00, but the co-tenant SI did not pay his half, defaulting on \$790.00 owed. The landlord is seeking compensation for the unpaid \$790.00 for June 2014. The tenants acknowledged that this amount was owed to the landlord for the month of June 2014 because SI did not pay his portion of the rent.

The landlord has claimed liquidated damages, ("*lease breaking fee*") of \$350.00 because the tenant ended the tenancy prior to the expiry of the fixed term. However, the landlord was not able to refer to any terms for liquidated damages in the written tenancy agreement and the tenants disagreed with the claim.

The landlord testified that the tenant left the carpets in a condition that required replacement. The landlord testified that the carpets are 2 years old. In support of the claim, the landlord submitted copies of the move-in and move-out condition inspection reports and a quote for the cost of new carpets. The landlord stated that they have restricted their claim to \$500.00, although the cost far exceeds this amount. The tenants agreed with this portion of the landlord's claim.

The landlord is also claiming \$200.00 for the cost of cleaning the unit and \$150.00 for the cost of cleaning the blinds and balcony. The tenants disputed this claim and stated that they were not given sufficient time to clean the unit because, near the end of June 2014, the landlord suddenly informed them that they must move on short notice because a new tenant was scheduled to move into the unit within days. The tenant's

position is that, although they had willingly agreed to vacate when the unit was successfully rented by the landlord, they did not anticipate that there would be no time for them to do the cleaning due to very short notice by the landlord.

The landlord testified that they are claiming \$5.00 for the lost mailbox key and \$75.00 for a lost FOB. The tenants agree that they should reimburse the landlord for this portion of the landlord's claim.

Analysis

I find that the tenants have agreed to the \$790.00 arrears owed for June 2014, the landlord's \$500.00 claim for carpet replacement, \$5.00 for the cost of the mailbox key and the \$75.00 compensation for the lost FOB. I find that the landlord is entitled to compensation for these undisputed claims.

With respect to \$790.00 rent claimed for May 2014, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement. In this instance, I find that half the rent in the amount of \$790.00 was paid by CJ and that, after some confusion with deposits and withdrawals involving SI's bank account, the \$790.00 still owed for May 2014 was finally debited on May 2, 2014. Therefore I dismiss the portion of the landlord's claim with respect to the \$790.00 arrears claimed for May 2014.

In regard to the landlord's claim for the liquidated damages of \$350.00 for breaking the lease, I find that the landlord has not sufficiently proven that there was a liquidated damages clause in the tenancy agreement. Therefore I find that this portion of the landlord's claim must be dismissed.

In regard to the claim for cleaning costs, I find that section 37(2) of the Act states that, upon vacating a rental unit, the tenant must leave it reasonably clean and undamaged, except for reasonable wear and tear. I accept the landlord's evidence that the rental unit was not sufficiently clean when the tenant vacated.

However, I also accept the tenant's testimony that they were required to vacate on short notice once the landlord found a replacement renter. I find that no 10-Day Notice to End Tenancy for Unpaid Rent was issued but the parties had made their own agreement that the tenant would vacate once the landlord secured another renter for the unit.

For this reason, I find that the tenant was not given sufficient opportunity to clean the unit, due to the sudden request to vacate and I dismiss the portion of the landlord's application seeking \$200.00 for cleaning and \$150.00 for window treatment cleaning.

Accordingly I find the landlord is entitled to total compensation of \$1,420.00, comprised of \$790.00 rental arrears for June 2014, \$500.00 for the carpet replacement, \$5.00 for the lost mailbox key, \$75.00 for the lost FOB and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$775.00 security deposit in partial satisfaction of the claim, leaving \$645.00 still outstanding.

I hereby grant a monetary order in favour of the landlord for \$645.00. This order must be served on the tenant and may be enforced in Small Claims Court if necessary.

Conclusion

The landlord's application is partly successful and the landlord is granted a monetary order for rent, damages and the cost of the application.

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: December 10, 2014

Residential Tenancy Branch

