



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LTE VENTURES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

This matter is in response to an application by the landlord pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. Unpaid rent or compensation for loss under the Act - Section 67;
2. An Order to retain the security deposit in partial satisfaction of the monetary claim - Section 38
3. An Order to recover the filing fee for this application - Section 72.

This hearing is pursuant to a reconvene and Interim Decision of proceedings dated October 29, 2014, in which both parties were represented. An adjournment was granted to allow the parties to accept and exchange all relevant evidence and for the respondent to be wholly apprised of the landlord's claim by, again, it being made available to them. The parties were individually notified of the adjourned hearing date particulars by the Branch.

Both parties attended the hearing and were given opportunity to present all *relevant* evidence and testimony in respect to the landlord's application and to make *relevant* prior submissions to the hearing and participate in the conference call hearing, as well as an opportunity to settle their dispute. Prior to concluding the hearing both parties acknowledged they presented all of the *relevant* evidence that they wished to present.

I accept the evidence of the landlord they served both respondents (the tenant) with their claim / application for dispute resolution together with their document evidence, by *registered mail*. The tenant acknowledged receiving the landlord's registered mail package comprised of 89 pages. The landlord acknowledged receiving the tenant's evidence of approximately 60 pages. It must be noted that despite the abundance of evidence submitted; only evidence relevant to the claim before this hearing will be considered.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed? *The applicant bears the burden of proof for their claim.*

Background and Evidence

In part, the landlord submitted a copy of the tenancy agreement and addendums. The following is undisputed by the parties. The tenancy has ended. The tenancy began September 01, 2013 as a 1 year fixed term tenancy agreement providing that the tenancy will end and the tenant will vacate the rental unit on the date specified as the end of the tenancy: August 31, 2014. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$662.50 which the landlord retains in trust. Rent in the amount of \$1325.00 was payable in advance on the first day of each month. The tenant chose to vacate the rental unit at the end of April 2014 and received the landlord's permission to sublet the unit to 2 individuals sourced by the tenant - to the end of the fixed term. The subletting individuals did not enter into a written tenancy agreement with the tenant. They paid rent to the tenant who in turn satisfied the payable rent to the landlord under the terms of the tenancy agreement.

The landlord claims compensation from the tenant for the tenant's 'over holding' of the rental unit beyond the end date of the fixed term agreement – to September 16, 2014 in the pro-rated amount of \$723.30. The tenant disputes they are responsible for this amount. The tenant provided evidence they confirmed their tenancy would end August 31, 2014. They claim onerous demands by the landlord during the last month of the tenancy compelled the sublets to require an extension to their occupancy of the rental unit. The tenant and landlord each provided evidence the tenant was opposed to any extended occupation of the rental unit beyond the fixed term.

The landlord relies on their premise the tenancy with the respondent tenant ended August 31, 2014. The landlord provided supporting evidence of written and e-mail correspondence to the tenant, beginning mid -July 2014, that the landlord sought to repossess the rental unit at the end of the fixed term agreement. The landlord reiterated this position clearly in e-mails dated July 30 and August 02, 2014, at the same time requesting / offering dates and times for the move out inspection. None the less, the landlord further provided that in early August 2014 the landlord entered into discussions with the sublets to possibly enter into a new separate agreement with them - onward from September 01, 2014. The landlord provided that the discussions failed and they notified the sublets of their decision not to enter into a new agreement in late August, 2014. The landlord testified they permitted an extension of the sublet's

occupancy and soon after filed for dispute resolution seeking, among other items, an Order of Possession.

The landlord claims from the tenant: *additional occupant fees* totalling \$150.00 (\$50.00 x 3 months) for June through August 2014. The landlord claims the tenant / sublet permitted an additional person to reside with them and the tenancy agreement addendum provides for the tenant to pay an additional \$50.00 per month per additional person with whom the landlord agrees, other than a “temporary guest of the tenant for more than 14 days”. The tenant disputes the landlord’s claim. They testified the landlord obtained certain information suggesting the sublet permitted an additional person to permanently reside in the rental unit, but has not provided evidence to support their claim. The landlord testified that the sublet confirmed to them an additional occupant was residing in the rental unit; and, further relies on specific pages within their document evidence - e-mails dated May 08, June 23, 27, July 07 and 16, 2014) to support the existence of an additional person residing with the sublets – reviewed in the hearing.

The landlord claims from the tenant: the cost of professional drapery cleaning in the amount of \$181.02, for which they provided a receipt. The tenant disputes the claim and testified the drapery may have been cleaned but was in poor repair and the tenant attended to sewing some of the drapery. The landlord testified the drapery was in reasonable condition and clean. The landlord provided the condition inspection report of the move in inspection dated August 15, 2014 indicating all window coverings as “dry cleaned” and in “good” condition. The condition inspection report particulars are endorsed by the tenant and the report signed by them, along with the landlord’s signature. The landlord also indicated that the tenancy agreement provides that at the end of the tenancy the tenant is responsible for professional cleaning of the window coverings at the end of the rental period if they were of same at the start of the rental period – reviewed in the hearing.

The landlord claims from the tenant: the cost for 1 hour of cleaning the rental unit / suite at the end of the tenancy in the amount of \$25.00, for which they provided a copy of the move out condition inspection report portion dated September 15, 2014 and claimed to have been completed solely by the landlord – although not signed by them. The tenant disputes the landlord’s claim although they acknowledge they did not attend the move out inspection as required and requested by the landlord. The landlord testified they e-mailed a Notice of Final Opportunity to schedule a condition inspection form for September 15, 2014 at 1:00 p.m., to no avail. In addition, the landlord provided a series of 8 photographs of the rental unit at the end of the tenancy claiming the unit was left

unclean, specifically the oven interior, range hood fixture, floor under appliances, a quantity of cast-offs of food and other items, and purported unclean window tracks. It must be noted that drapery cleaning is factored in a separate portion of the landlord's claims.

The landlord claims from the tenant: costs for preparing and advancing their application for dispute resolution, inclusive of registered mail costs, preparing various forms required by the landlord along with photocopying, and time to attend the hearing for their application: in the amount of \$600.00. It was explained to the landlord that parties are responsible for their own discretionary costs, and all costs to advance their own litigation efforts, inclusive of all costs to file their application and any cost to attend their (own) hearing. Effectively, the landlord was notified their claim for "administrative fees": costs and time to complete all of the aforementioned, was not a compensable claim, and is preliminarily **dismissed**.

Analysis

On preponderance of the *relevant* evidence before me, and on balance of probabilities, I make the following findings.

I find that under the *Act*, the party claiming a loss bears the burden of proof. Moreover, such applicant must satisfy each component of the following test established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

Therefore, in this matter, the landlord bears the burden of establishing the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to *mitigate or minimized* the loss incurred.

In respect to the landlord's claim of pro-rated rent in compensation for over holding the rental unit, I find the evidence is that both parties in this matter were equally clear in their acknowledgement, understanding and assertions that the tenancy of this matter would end August 31, 2014 unless the parties agreed to a renewal of the agreement.

I find that apart from the tenancy of this matter, the landlord entered into separate and private discussions with the sublets respecting a possible new tenancy agreement from September 01, 2014 – unrelated to the tenancy of this matter. I accept the evidence of the landlord that as a consequence of failed discussions with the sublet they allowed continued occupation beyond August 31, 2014. However, I find that any continued occupation of the rental unit beyond the agreed end date of the tenancy agreement of August 31, 2014 was neither authorized by the tenant or *the result of the actions or neglect of the tenant in violation of the Act or agreement*. Rather, I find the landlord made independent arrangements with the unsuccessful applicant authorizing their occupation of the rental unit beyond the end date of the tenancy. I find the landlord's claim for loss does not meet the test established by Section 7 of the Act. As a result, I find that the tenant's tenancy ended August 31, 2014 in concert with the terms of the tenancy agreement and effectively the tenant is not responsible for compensating the landlord pursuant to an, "overholding tenant". Therefore, I must **dismiss** this portion of the landlord's claim.

In respect to the landlord's claim of \$150.00 for an *additional occupant*, I find that in this type of claim, it is not enough for the landlord to provide hearsay information or suggest certain circumstances as facts. I have carefully reviewed the landlord's evidence they highlighted and stated supported their claim. I find that in the absence of independent information the landlord has not provided sufficient evidence to sufficiently support this portion of their application, even on balance of probabilities. I find the sum of the landlord's evidence does not adequately support that the rental unit was occupied by a person in circumstances other than as a temporary guest. As a result, I must **dismiss** this portion of the landlord's claim.

In respect to the landlord's claim for professional drapery cleaning, I find the evidence is clear that at the start of the tenancy the parties deemed and agreed the drapery was dry cleaned and in good condition. Of particular relevance to this matter is that the window coverings were deemed by the parties to be professionally cleaned at the outset of the tenancy and the parties agreed in their agreement that therefore the tenant shall pay for professional cleaning at the end of the rental period. I find the landlord provided proof of payment for professional dry cleaning in the amount of **\$181.02**, and **I grant** this same amount to the landlord.

In respect to the landlord's claim of \$25.00 for cleaning the rental unit at the end of the tenancy, I find the landlord has provided sufficient evidence in support of their claim the rental unit was left with an unclean oven interior, unclean range hood, unclean floor and window tracks, and a small portion of cast-offs including some of food items. I find the landlord's evidence supports that the rental unit was left less than reasonably clean as required by **Section 37** of the Act – **Leaving the rental unit at the end of a tenancy**. I accept the landlord's evidence for this claim and find the claimed amount to be reasonable in the circumstances. **I grant** the landlord their request in the amount of **\$25.00**.

I reiterate that the landlord's claim of compensation for attending to all matters of this dispute has been preliminarily **dismissed**.

As the landlord has been partially successful in their application, they are entitled to recover their filing fee in the amount of **\$50.00** - for a sum award in the amount of **\$256.02**.

Having determined the landlord's award it must be noted that **Residential Tenancy Policy Guideline #17**, states as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- *a landlord's application to retain all or part of the security deposit, or*
- *a tenant's application for the return of the deposit*

unless the tenant's right to the return of the deposit has been extinguished under the Act. The Arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. On determining the landlord's award it is appropriate that after deducting the landlord's award from the tenant's security deposit I Order the balance of the deposit in the amount of **\$406.48** be returned to the tenant.

Conclusion

I Order that the landlord may retain \$256.02 of the tenant's security deposit and must return the balance of the security deposit of \$406.48 to the tenant.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$406.48**. *If necessary*, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: January 12, 2015

Residential Tenancy Branch

