



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The landlord's monetary claim is in respect of August's rent, liquidated damages, and cleaning costs.

The tenant did not attend this hearing, although I waited until 1356 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord's agent is an employee of the landlord. The agent testified that she is not a shareholder in the corporate landlord and has no financial interest in the outcome of this application. The agent elected to call her assistant as a witness.

Preliminary Issue – Service of Dispute Resolution Package

The agent testified that the landlord served the tenant with the dispute resolution package on 18 August 2014 by registered mail sent to the tenant's forwarding address. The landlord provided me with a Canada Post customer receipt that showed the same.

The agent testified that tenant verbally provide her forwarding address to the caretaker when the caretaker discovered the tenant moving from the rental unit. This forwarding address was provided to the agent's assistant. The assistant testified under oath that she was provided with this address in writing by the caretaker, who reported to the assistant that he had received it verbally from the tenant. The assistant wrote a note on the caretaker's note to that effect. The agent testified that the package was signed for by PL on 19 August 2014. The agent does not know who PL is.

Paragraph 89(1)(d) states that a landlord may deliver documents to a forwarding address provided by a tenant.

Paragraph 38(1)(b) deals with provision of the tenant's forwarding address for the purposes of return of the tenant's security deposit:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

Although the tenant's notice of forwarding address failed to comply with paragraph 38(1)(b), I do not find that there is a similar requirement that the forwarding address for the purposes of paragraph 89(1)(d) that the notice be in writing. I find that the landlord is entitled to rely on the forwarding address provided verbally by the tenant to the caretaker. I find the agent's and assistant's testimonies highly reliable as they have no financial interest in the outcome of this matter. Furthermore, the landlord made a contemporaneous written record of this verbal notice. This written form corroborates the testimony of both the agent and assistant.

On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Preliminary Issue – Landlord's Request to Amend Application

At the hearing the agent asked to amend the landlord's application to withdraw the landlord's claim for lost rent for September, October, November, and December. The agent testified that new tenants began occupying the rental unit as at 1 September 2014.

Paragraph 64(3)(c) allows me to amend an application.

As there is clearly no prejudice to the tenant by allowing the landlord to reduce its claim, I allowed the amendment.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent and assistant, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The parties entered into a tenancy agreement dated 28 February 2014. This tenancy agreement was a three-month fixed-term tenancy that commenced 1 March 2014 and ended 31 May 2014. From 1 June 2014 to 30 June 2014, the tenant was on a month-to-month tenancy. The parties entered into a second, fixed-term tenancy that commenced 1 July 2014 and expired 31 December 2014.

The tenancy agreement dated 1 July 2014 had the following liquidated damages clause:

If the Tenant terminates the tenancy before the end of the original term, the Landlord may, at the Landlord's option, treat his Tenancy Agreement as being at an end. In such event, the sum of \$300.00 shall be paid by the Tenant to the Landlord as liquidated damages, and not as a penalty, to cover the costs of re-renting the said premises. ...

The tenancy agreement contains a clause regarding cleaning at the end of the tenancy:

Upon vacating the premises, the tenant agrees to have the carpets and drapes professionally cleaned. Costs to be taken from security deposit. Carpet cost to be approximately \$86-. Window covering cost to be approximately \$40-.

On 19 July 2014, the tenant provided notice to the landlord that she would be vacating the rental unit. The tenant's note set out the following:

[landlord]

July 19, 2014

I am wanting to end my tenancy here as I am already looking for a new place.

I hope you guys are looking for new tenants right away.

[tenant's signature]

The agent testified that she wrote on the note the rental unit's address, "*I am presuming Aug 31/14 [agent's initials]*", and "*Lease doesn't end until Dec 31/14*". The agent testified that she assumed that the tenant was going to vacate the rental unit on 31 August 2014. The agent testified that she believes either the caretaker or the tenant wrote the name of the rental unit's building on the note. The note is date stamped 28 July 2014.

The assistant wrote to the tenant on 28 July 2014:

Thank you for your letter informing us of your intention to move from your location on August 31, 2014.

According to the Lease Agreement, which you have signed with us, you are responsible for rent on your unit and your utilities until December 31, 2014, or until such time as the unit is re-rented due to the following reason:

LEASE TERM DOES NOT EXPIRE UNTIL December 31, 2014.

We will make every effort to re-rent your unit as of September 1, 2014 and if we are successful you will be freed of your obligation, but we will deduct the sum of Three hundred Dollars (\$300.00) in the form of a "Re-rent Fee" from your security deposit for the time and work involved in re-renting the suite on your behalf...

The tenant vacated the rental unit on 31 July 2014.

The agent testified that the rental unit was re-rented as of 1 September 2014.

The landlord provided me with a Notice of Final Opportunity to Schedule a Condition Inspection that was delivered on 30 July 2014 at 1515. That notice proposed an inspection time of 1800 on 31 July 2014. The landlord provided me with a second Notice of Final Opportunity to Schedule a Condition Inspection that was delivered on 31 July 2014 at 1000. The second notice proposed an inspection time of 1000 to 1800 on 1 August 2014.

The landlord provided me with a copy of the condition move in/out inspection report. There is nothing remarkable about the condition move-in inspection report. The move-out inspection report notes that:

- the stove was dirty and required one hour to clean;
- the fridge as dirty and required one hour to clean;
- the bathroom was dirty and required one hour to clean;
- the counters and cupboard were dirty and required 0.25 hours to clean; and
- garbage was left in the unit and required one hour to clean.

The landlord provided me with a receipt for carpet cleaning. That receipt was dated 1 August 2014 and set out a total cost of \$84.00. The landlord provided me with a receipt for four hours of cleaning for the rental unit dated 6 August 2014. The receipt was provided by the caretaker of the rental unit and was for a total of \$72.00.

The landlord provided me with documentary evidence, which shows the landlord's attempts to re-rent the rental unit.

The landlord seeks a monetary order in the amount of \$831.00:

| Item | Amount |
|---|-----------------|
| Unpaid August Rent | \$650.00 |
| Liquidated Damages | 300.00 |
| Carpet Cleaning | 84.00 |
| Cleaning Costs | 72.00 |
| Offset Security Deposit Amount | -325.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order Sought | \$831.00 |

Analysis

The landlord has claimed for various losses.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

August's Rent

I find that the landlord and tenant entered into a fixed-term tenancy for the period 1 July 2014 to 31 December 2014.

Subsection 45(2) of the Act sets out how a tenant may end a fixed-term tenancy: A tenant may end a fixed-term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

This means that a tenant cannot give notice to end the tenancy on a date before the end of the fixed term. In this case, the tenant vacated the rental unit before the completion of the fixed term. The tenant has breached the Act and as a result the landlord experienced a loss.

The landlord was unable to effectively mitigate its losses because the tenant did not provide the date she was vacating the rental unit on her notice. This is a breach of paragraph 52(c) of the Act.

I find that the landlord has proven that it is entitled to compensation for August's rent in the amount of \$650.00.

Liquidated Damages

The tenant's last tenancy agreement was the second of two fixed-term tenancies. The original tenancy ended 31 May 2014. The liquidated clause in the tenancy agreement clearly sets out that it applies to the "original term". Using the ordinary meaning of "original", I find that this term applies to the first of the successive fixed-term tenancies. Accordingly, the tenant did not terminate before the end of the "original term" (that is, 31 May 2014) and thus the tenant is not liable for liquidated damages.

Cleaning Costs

The agent testified that the tenant left the rental unit dirty when she vacated. The agent testified that the landlord incurred costs of \$156.00 to clean the unit.

Subsection 32(2) of the Act requires a tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. *Residential Tenancy Policy Guideline*, “1. Landlord & Tenant – Responsibility for Residential Premises” states:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

The landlord provided me with a receipt for carpet cleaning in the amount of \$84.00. I find that the tenant and landlord agreed in the tenancy agreement that the carpets will be professionally cleaned at the end of the tenancy. I recognize that the total combined tenancy was for less than one year; however, I find that this term does not contradict the Act as the policy guideline is just that: a guideline. Accordingly, I find that the landlord is entitled to recover this amount from the tenant.

The landlord provided me with a receipt for \$72.00. I note that this receipt is for fewer hours than stated in the condition move-out inspection report: I am not concerned by this as the discrepancy is small and the landlord is claiming the lesser of the two. I accept the agent's testimony that this cleaning was necessary in order to bring the unit into condition for re-rental. I find that the landlord has proven its entitlement to recovery of this amount.

Security Deposit and Filing Fee

The landlord applied to keep the tenant's security deposit. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. No interest is payable.

As the landlord has been successful in this application, it is entitled to recover its filing fee.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$531.00 under the following terms:

| Item | Amount |
|---|-----------------|
| Unpaid August Rent | \$650.00 |
| Carpet Cleaning | 84.00 |
| Cleaning Costs | 72.00 |
| Offset Security Deposit Amount | -325.00 |
| Recovery of Filing Fee for this Application | 50.00 |
| Total Monetary Order Sought | \$531.00 |

The landlord is provided with these orders in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders of that Court.

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

Dated: March 12, 2015

Residential Tenancy Branch

