



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding F.H.B.W. Investments Co. Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the landlord for a monetary order for money owed or compensation for damage or loss under section 67, authorization to retain all or part of the security deposit under section 38 and authorization for recovery of the filing fee under section 72 of the Residential Tenancy Act (the Act).

The landlord attended the hearing by conference call and gave undisputed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the Notice of Hearing Package by Canada Post Registered Mail on September 4, 2015 and has provided a copy the Customer Receipt Tracking number in her documentary evidence. The landlord stated that the package was sent to the address provided by the tenant from her forwarding address in writing which was received at the end of the tenancy. The landlord stated that the package was returned to the sender as unclaimed. I accept the undisputed evidence of the landlord and find pursuant to section 89 of the Act that the tenant was duly served.

The landlord also stated that the tenant was served with the documentary evidence package on February 25, 2015 by Canada Post Registered Mail and has submitted in her direct testimony the Customer Receipt Tracking number as confirmation. The landlord stated that this package was also returned by Canada Post as unclaimed. I accept the undisputed evidence of the landlord and find pursuant to section 88 of the Act that the tenant was duly served with the documentary evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation?
Is the landlord authorized to retain all or part of the security deposit?
Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord provided in her direct testimony that this tenancy began on April 1, 2009 on a month-to-month basis as per a signed tenancy agreement dated March 25, 2009. The monthly rent was \$1,140.00 payable on the 1st of each month and a security deposit of \$517.50 was paid on March 25, 2009.

The landlord stated that the tenant provided proper notice to vacate the rental unit on August 31, 2014. The landlord stated that on August 31, 2014 (the moving day), the tenant vacated the rental unit.

The landlord seeks a monetary claim of \$517.50, which consists of \$380.00 for the cost of painting the rental unit, \$103.95 for the cost of carpet cleaning, \$290.00 for the landlords labour in packing all of the tenant's abandoned property and \$396.90 for the cost of professional movers to remove the abandoned packed belongings into a storage room. The landlord clarified that she understood that the total sum equals to \$1,170.85 which exceeds the amount claimed in the application, which she would be limited to.

The landlord has provided an invoice from a handyman dated October 6, 2014 for the \$380.00 cost for painting over the dark colored walls to neutral colors. The landlord clarified that the tenant painted over the neutral colors without permission as shown in the submitted photographs. The landlord has submitted copies of an email exchange in which the tenant acknowledged her responsibility to re-paint the unit at the end of the tenancy and that she would engage the landlord's painter to paint the rental unit. The landlord stated that she was unable to submit a copy of the invoice from her carpet cleaning contractor, but stated that the carpets were left dirty requiring cleaning and that the invoice that was paid to her contractor for carpet cleaning totalled, \$103.95. The landlord relies on the submitted photographs that show that the tenant left the rental requiring carpet cleaning. The landlord also stated that she spent the evenings of September 2, 4, and 5 at approximately 5 hours each and September 6 and 7 for approximately 8 hours each, totalling, approximately 31 hours that she spent packing all of the tenant's contents. The landlord seeks compensation for her time at \$9.35 per hour totalling, \$290.00 for the 31 hours of labour. The landlord stated that the amount of items left can be reviewed in her submitted 46 photographs and the itemized inventory list of 61 items submitted in her documentary evidence. The landlord also seeks \$396.90 invoiced from K.F. her contractor for labour of 3 movers for 4.5 hours per person at \$28.00 to move all of the tenant's personal belongings into an on-site storage area.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage/loss.

I accept the undisputed evidence of the landlord and find that the tenant vacated the rental unit without re-painting the rental unit as promised to the original neutral colors. The landlord submitted a copy of a paid invoice for repainting of \$380.00. This portion of the landlord's claim is granted.

I accept the undisputed evidence of the landlord and find that the tenant vacated the rental unit leaving the carpets dirty requiring cleaning based upon the photographic evidence submitted and the landlord's direct testimony. The landlord provided in her direct testimony an invoice for \$103.95 which was paid for carpet cleaning. This portion of the landlord's claim is granted.

I accept the undisputed evidence of the landlord and find that the tenant vacated the rental unit abandoning her personal property without consent of the landlord. The landlord has provided submissions that 31 hours was spent packing the tenant's belongings is supported by the submitted photographs of the rental unit and the landlord's detailed inventory list of 61 items. The landlord's claim for general labor in packing/organizing the abandoned property over a 31 hour period at \$9.35 per hour totaling, \$290.00 is granted.

I accept the undisputed evidence of the landlord that the abandoned personal property was removed by professional movers incurring a cost of \$396.90 as shown by the submitted invoice from K.F. and the itemized list of the tenant's abandoned property. This portion of the landlord's claim is granted.

The landlord has been successful in establishing a claim for monetary compensation of \$1,170.85. However, the landlord's claim is limited to the amount claimed of \$517.50 as filed in the application for dispute.

The landlord having been successful in the application for dispute is entitled to recovery of the \$50.00 filing fee. I order that the landlord may retain the \$517.50 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$50.00.

Conclusion

The landlord may retain the \$517.50 security deposit in satisfaction of the claim.

The landlord is granted a monetary order for \$50.00 for recovery of the filing fee. This order may be filed in the Small Claims Division of the Provincial Court and 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: March 30, 2015

Residential Tenancy Branch

