



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRAMERCY ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, 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, damage or loss pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend. The landlord's representative ("the landlord") attended and was given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that the Application for Dispute Resolution hearing package was sent to the tenants in individual packages by registered mail on January 8, 2015. The landlord testified the package was sent to the forwarding address provided by the tenants. I accept that the tenants were both deemed served with the Application for Dispute Resolution hearing package on January 13, 2015, 5 days after its mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and for damage or loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit towards any monetary award? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on August 1, 2014 for a fixed term of one year. The rental amount of \$1300.00 was payable on the first of each month. The landlord testified that she continues to hold a security deposit paid by the tenants on July 22, 2014 in the amount

of \$650.00. The landlord sought to retain this deposit in partial satisfaction of a \$1773.00 monetary order requested in this application.

The landlord provided sworn undisputed testimony that the tenants vacated the rental unit on January 2, 2015 after two days' notice to the landlord. The tenants provided their forwarding address on that same date: January 2, 2015. She testified that the landlord was unable to re-rent the unit until February 1, 2015. She also testified that the tenants did not pay rent for January 1, 2015. The landlord testified that online ads were posted to rent the unit but that the unit required cleaning and repairs that delayed their ability to place a new tenant in the unit immediately.

The landlord testified, submitting photographs in support that the rental unit was not cleaned when the tenants vacated the rental unit. The photographs illustrated carpet stains, a broken door handle, holes and tobacco stains on walls, and a missing shower head. The landlord testified that, as property manager for the premises, she and another staff member conducted 4 hours of cleaning and made repairs to the unit to return it to the condition before the tenants moved in. The landlord submitted invoices that reflected the property owner's payment to the staff for their work.

In further support of her application, the landlord supplied a condition inspection report reflecting the state of the rental unit at move-in and at move-out. She testified that the tenants were present at the move-out inspection on January 2, 2015 and that they signed the report. The report indicates that, "carpets need cleaning; shower head is missing, door handle off door – needs replacement – 4 hrs cleaning; needs paint." The report clearly indicates that the entire unit had been painted at the start of this tenancy. The tenants also signed in the deposit deduction portion of the report referring to a deduction of \$650.00 to address the condition of the unit.

The landlord provided sworn undisputed testimony that she spoke to both tenants about the landlord's need to retain the security deposit because of the cleaning and repairs needed to the unit. She testified that she took photographs at the time, noted the taking of photographs on the condition inspection report and advised the tenants that she was taking photographs as evidence in applying to retain the security deposit.

Analysis

I find that the landlord is entitled to receive an order for unpaid rent in January 2015 as the tenant did not vacate the unit in time for the landlord to rent for January 1, 2015. Further, the landlord provided undisputed evidence that, because of repairs and cleaning, the landlord was unable to re-rent the unit until February 1, 2015. I accept the

uncontested evidence offered by the landlord that despite efforts to advertise the rental, new tenants were not found until February 1, 2015. I am issuing the attached monetary order that includes the landlord's application for \$1300.00 in unpaid rent for January 2015.

The landlord also applied for a monetary order for replacement items, repairs and cleaning to the rental unit after the tenants vacated the rental unit. 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.

The landlord provided undisputed sworn testimony that cleaning, repairs and replacement items were required as a result of this tenancy. The landlord provided supporting evidence in the form of photographs to illustrate the stained carpets and broken items as well as the condition of the rental unit when the tenants moved out. The landlord also provided a copy of the condition inspection report that shows the good condition of the rental unit when the tenants moved in and the need for cleaning and repairs on move-out. The testimony of the landlord is that the tenants were present for the move-out condition inspection and the report submitted by the landlord substantiates this testimony.

With respect to the landlord's claim for the costs of painting, I note that the tenants did not indicate any dispute on the condition inspection report prepared at the end of this tenancy. The report clearly stated that the unit had been painted prior to the tenants moving into the unit. The report also states, "needs paint". An invoice submitted for this hearing by the landlord identifies painting labour and materials for this 1 bedroom unit at \$300.00. I find the landlord has proven that the actions of the tenants during the course of their tenancy required the landlord to paint at the end of the 5 month tenancy. I find that the landlord has proven their costs in re-painting the unit.

Based on all of the undisputed evidence submitted by the landlord, I find the landlord is entitled to a monetary order for cleaning costs, repairs costs, and replacement costs as a result of this tenancy. The landlord has sought and is entitled to a monetary order as follows;

Item	Amount
Unpaid Rent	\$1300.00
4 hours of cleaning @ \$27.00 per hour	108.00
Replacement of Door Handle + Showerhead (\$10.00 + \$30.00)	40.00
Carpet cleaning	100.00
Painting costs	300.00
Less Security Deposit	-650.00
Less "remote control" deposit	-75.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Amount Owed to Landlord	\$1173.00

The landlord acknowledged in testimony that she continues to hold a \$75.00 deposit for a "remote control" that the tenants paid at the start of the tenancy. She further testified that this item has now been returned by the tenants and requested that the \$75.00 be deducted from any award to the landlord. The landlord testified that she also continues to hold a \$650.00 security plus any interest from July 22, 2014 to the date of this decision for this tenancy. Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenants' forwarding address in writing, to either return the security deposit in full or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit.

With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. In this case, the landlord had 15 days after January 2, 2015 (the provision of the tenants' forwarding address and their move-out date) to take one of the actions outlined above. The landlord applied to retain the security deposit within that timeframe. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if "at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant." The condition inspection report submitted provides evidence of an agreement by the tenants that the landlord retain their security deposit. Therefore, section 38(4)(a) of the *Act* applies to the tenants' security deposit.

If the tenants did not intend to sign to agree to release their security deposit to the landlords, I find that the landlord has provided sufficient proof of the costs incurred at the end of this tenancy. I find that the landlord is entitled to retain the tenants' security

deposit in partial satisfaction of the monetary award issued in this decision. There is no interest payable for the time period the landlord held the tenants' deposit.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary award payable by the landlords to the tenants as follows;

Item	Amount
Unpaid Rent	\$1300.00
4 hours of cleaning @ \$27.00 per hour	108.00
Replacement of Door Handle (\$10.00) + Replacement of Showerhead (\$30.00)	40.00
Carpet cleaning	100.00
Painting costs	300.00
Less Security Deposit	-650.00
Less "remote control" deposit	-75.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Amount Owed to Landlord	\$1173.00

The landlord is provided with an Order in the above terms and the tenant must be served with a copy of this Order as soon as possible. Should the tenant fail to comply with this Order, 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: May 27, 2015

Residential Tenancy Branch

