



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOLYWELL PROPERTIES
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* ("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*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's 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 tenant, pursuant to section 72.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the tenant's Application.

The tenant confirmed that he did not serve witness statements on the landlord or the Residential Tenancy Branch ("RTB") prior to this hearing. Therefore, I advised both parties that I was unable to consider the tenant's witness statements at this hearing or in my decision, as it was not served in accordance with Rule 3.1 of the RTB *Rules of Procedure*.

Issues to be Decided

Is the landlord entitled to a monetary award 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?

Is the landlord entitled to retain 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

Both parties agreed that a previous hearing between these same parties at this rental unit occurred on May 27, 2015 before a different Arbitrator. A decision was issued, dated May 28, 2015, following that hearing. The file number for that hearing appears on the front page of this decision. In that hearing, the tenant applied for a monetary order to recover double the amount of his security deposit. The Arbitrator found that the tenant was entitled to double the amount of his security deposit minus the portion already returned to him by the landlord, for a monetary award totalling \$994.93. The landlord stated that he has not yet paid the tenant because he has not been served with the monetary order.

Both parties confirmed that this tenancy began on July 1, 2013 and ended on August 31, 2014. The landlord confirmed that this was a fixed term tenancy of one year, after which it transitioned to a month to month tenancy. Monthly rent of \$1,000.00 was payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant. The tenant confirmed that he provided his written forwarding address to the landlord on August 31, 2014, by leaving a note and the rental unit keys in an envelope in the landlord's mail slot. The landlord confirmed that a written forwarding address was provided by the tenant but he could not recall the exact date.

Both parties agreed that a move-in condition inspection and report were completed on June 26, 2013. The landlord confirmed that he performed a move-out condition inspection and report without the tenant present, on September 2, 2014. The landlord indicated that the parties had agreed to meet on August 29, 2014, to perform a move-out condition inspection and report but that the tenant had not yet moved his belongings from the rental unit and therefore, the tenant was not ready to participate. The tenant stated that he was entitled to move on August 31, 2014 and that he was not required to perform a move-out condition inspection and report on August 29, 2014. The tenant stated that the landlord advised him that the landlord was unable to perform a move-out condition inspection and report on August 31, 2014. The landlord provided copies of emails between the parties, indicating that the tenant agreed to either August 28 or 29, but settled on August 29, and that the landlord also proposed to do a move-out condition inspection without the tenant on September 2, 2014 and that the landlord would mail the report to the tenant for approval after. The landlord stated that it was only a preference not to do a move-out condition inspection on the weekend, as August 31, 2014 was a Sunday, and that the tenant did not make himself available on

September 2, 2014, because he had to catch a ferry. The tenant denied this, indicating that he did not have to catch a ferry and was in town all week and available to the landlord. The parties agreed that the landlord provided an email to the tenant on September 18, 2014, with photographs of the condition of the rental unit, asking the tenant to pay for the cost of cleaning, otherwise the landlord would apply for dispute resolution at the RTB. The landlord provided a copy of this email. The tenant stated that he spoke with the landlord's agent about cleaning costs but asked to speak to the landlord to discuss the issue further and never received a call back from the landlord.

The landlord seeks \$1,000.00 in lost rental income for September 2014, because the tenant provided less than one month's notice to vacate the rental unit. The tenant stated that he provided notice by way of email on August 1, 2014, to vacate the rental unit by August 31, 2014. The landlord provided a copy of this email. The landlord stated that he was unable to re-rent the unit until December 15, 2014 when a new tenant moved in and paid \$1,050.00 per month in rent. The landlord stated that the unit was advertised for \$1,050.00 per month, as it was for the tenant, before the landlord offered the tenant a reduction in the rent to \$1,000.00 per month. The landlord indicated that he advertised online on the landlord's website, a popular social networking site and one popular newspaper in the local area. The landlord did not provide any copies of advertisements. The landlord stated that it is the landlord's practice to advertise immediately after receiving notice of a tenant's intention to vacate. The tenant disputes that this rental unit was advertised immediately, indicating that he did not see any advertisements posted in the few days after he gave notice to the landlord.

The landlord indicated that it was the landlord's practice not to include fixed term tenancy periods in the advertisements, although the landlord does prefer a fixed term of one year. The landlord indicated that this rental unit may have taken some time to re-rent because it is a small cottage which may not appeal to all tenants and the landlord is selective of tenants and performs credit screenings. The tenant indicated that the rental unit probably did not re-rent quickly because it is a 60-year-old property, the heating costs are high and there is a very tiny bathroom which is not large for families. The landlord seeks \$110.25 for carpet cleaning after the tenant vacated the rental unit. The landlord indicated that the tenant was required to professionally shampoo the carpets and provide a receipt from a recognized carpet cleaning company, as per clause 10 of the tenant agreement addendum. The landlord stated that the unclean carpet was noted in the move-out condition inspection report. The landlord provided an invoice for the above amount, which was dated for September 5, 2014. The tenant stated that he rented a shampoo machine from the hospital where he works in order to clean the carpets in the rental unit on August 30, 2014. The tenant confirmed that

although he vacated on August 31, 2014, he was able to shampoo the carpets the day before, because all of his belongings were piled on non-carpeted areas and did not interfere with his carpet cleaning. The tenant indicated that he did not have a receipt for the machine rental because he used it from his workplace.

The landlord further seeks \$334.68 for rental unit cleaning that had to be performed after the tenant vacated the rental unit. The landlord provided a receipt for this amount which was dated for August 5, 2014, but the landlord stated that this is a clerical error and should read as September 5, 2014. The receipt indicates a description of the work done and that 12.75 hours of cleaning was done at a rate of \$25.00 per hour plus tax. The landlord indicated that the move-out condition inspection report notes that cleaning is required. The landlord provided black and white photographs of the rental unit after the tenant vacated, showing the condition of the rental unit. The tenant disputes the landlord's costs for cleaning, stating that he adequately cleaned the rental unit, that the house was old and in worse condition when he moved in than when he vacated, and that he only left some containers behind in the shed. The tenant stated that the photographs provided by the landlord of the dirt near the washer and dryer as well as the stove burners, was the condition in which he was provided with possession of the rental unit at the beginning of this tenancy. The tenant indicated that had he been present when the move-out condition inspection occurred, he would have been able to review the condition of the unit with the landlord at that time.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings around each are set out below.

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 or 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 and show efforts to minimize this loss. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenant caused damages that were beyond reasonable wear and tear that could be expected for

a rental unit of this age. The landlord must also show that the tenant caused a rental loss for September 2014.

In summary, the landlord must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the tenant in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the landlord followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 of the *Act* requires a tenant to provide one month's written notice to the landlord to end a tenancy. The notice must be given on the day before the day in the month when rent is due. Both parties agreed that rent is due on first day of each month, as noted in the tenancy agreement. The tenant gave notice on August 1, 2014 to leave on August 31, 2014. The tenant's notice was due by July 31, 2014 and was therefore one day late.

However, the landlord must show efforts to minimize the rental loss for September 2014. The landlord did not provide copies of any advertisements or the dates of when the advertisements were posted. The tenant disputes that the landlord posted advertisements immediately upon receiving the tenant's notice to vacate. The rental unit was advertised for a higher rental price of \$1,050.00 than the rent that the tenant was paying of \$1,000.00. Accordingly, I find that the landlord failed to fully mitigate its losses and is only entitled to half a month's rent, totaling \$500.00, for September 2014. I find that the tenant's notice to vacate was only one day late, that the landlord had the entire month of August 2014 to advertise and show the rental unit, and that an additional half month of September 2014 is a reasonable period of time to have the rental unit re-rented. I find that the rental unit is also a unique property that may have had other factors involved in its inability to rent in a reasonable period of time, including its size and age.

I dismiss the landlord's claim for \$110.25 for carpet cleaning, without leave to reapply. I find that the landlord did not provide sufficient evidence that the carpets required shampooing. Although the landlord provided a receipt for new carpets installed in May 2013, prior to the start of this tenancy, the landlord did not provide any photographs showing that the carpets required shampooing. Although the tenancy agreement addendum requires carpet shampooing, I accept the tenant's sworn testimony that he

shampooed the carpets on the day before he vacated the rental unit with a rental machine from his hospital workplace. It is the landlord's burden to prove that a loss existed and I find that the landlord failed to meet part 1 of the test above.

I award \$100.00 to the landlord for rental unit cleaning. The landlord provided an invoice for cleaning and I accept that the date was mistakenly noted as August 5 instead of September 5. The tenant agreed that he left containers behind in the rental unit and that the dirt shown in various areas in the landlord's photographs was there when he began his tenancy. Although the landlord is required to provide the rental unit to the tenant in a clean condition at the start of the tenancy, both parties signed the move-in condition inspection report and cleaning was not listed as an issue or required task to be completed. The landlord also provided a receipt for \$150.00 for cleaning completed on April 24, 2013, prior to the start of this tenancy. As per Residential Tenancy Policy Guideline 1, the tenant is required to maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit during the tenancy and the tenant is also "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." I find that the tenant did not abide by the above guideline at the end of this tenancy and that the above amount is a reasonable amount for cleaning, particularly given the landlord's receipted amount provided for cleaning at the beginning of this tenancy.

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

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$650.00 against the tenant as follows:

Item	Amount
September 2014 rent loss	\$500.00
Cleaning Expenses	100.00
Recovery of Filing Fee	50.00
Total Monetary Award	\$650.00

The landlord is provided with a monetary order in the amount of \$650.00 in the above terms and the tenant must be served with 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.

The landlord's Application to retain the tenant's security deposit is dismissed without leave to reapply, as this matter was already adjudicated at the previous hearing and therefore, I am *res judicata* with respect to this matter.

The monetary order that was given to the landlord at the previous hearing is still in full force and effect. This decision and monetary order does not affect the previous hearing decision or order.

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: August 20, 2015

Residential Tenancy Branch

