



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord's agents (the landlord) attended the conference call hearing. The landlord's agents and the male tenant gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The parties advised me there was an error in the spelling of the female tenant's last name. The parties did not raise any objections to the tenants last name being corrected and this has been amended on the style of cause.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit?
- Is the landlord permitted to keep all or part of the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on June 01, 2014 for a fixed term tenancy of one year. The tenant argued that the landlord had put a wrong date as the end date of the tenancy stating that the tenancy will end on May 31, 2014 instead of 2015. The tenant argued that this makes the tenancy agreement invalid. The parties agreed that rent for this unit was \$825.00 per month due on the 1st of each month in advance. The tenants paid a security deposit of \$412.50 on May 24, 2014. Both parties attended the both in and move out condition inspection of the rental unit and the tenants provided a forwarding address in writing on the inspection report on April 30, 2015. The tenancy ended on that date.

The landlord KO testified that they agree an error was made on the year the tenancy was due to end on the tenancy agreement; however, the agreement still states the tenancy was for a fixed term of one year and started on June 01, 2014. The tenants provided late notice to end the tenancy on April, 01, 2015 with a move out date of May 01, 2015. The landlord informed the tenant in writing that this was late notice and that written notice must be received the day before the day that rent is due in order to be effective at the end of the following month.

KO testified that the landlord started to advertise the unit on April 09, 2015 although other ongoing advertisements for vacant units in the building were currently running. The unit was re-rented for May 15, 2015. The landlord seeks to recover a loss of rental income for the first two weeks in May of \$412.50.

KO referred to the addendum to the tenancy agreement and the clause in the addendum concerning liquidated damages charged to the tenants if the tenants end the tenancy prior to the end of the fixed term. This clause informed the tenants that a liquidated damages fee of \$412.50 will be charged to the tenants. As the tenants did end the tenancy a month earlier than the end date of their fixed term tenancy the landlord seeks to apply the liquidated damages clause and recover \$412.50.

KO testified that the tenants were late with their rent in December, 2014. There is a clause in the addendum to the tenancy agreement which informs the tenants that a late fee of \$25.00 will be charged in any month that rent is paid late. Rent for December, 2014 was paid on December 09, 2014. The landlords notified the tenants in writing that a late fee had been applied but the tenants did not pay this. The landlord therefore seeks to recover \$25.00 from the tenants.

KO testified that during the move out inspection it was identified that the blind in the living room had missing slats. The landlord seeks to recover \$20.00 to replace these slats and has provided the invoice for this work in evidence.

KO testified that during the move out inspection it was also identified that the mirrored closet door was broken. The landlord seeks to recover \$50.00 to replace this door and has provided the invoice in documentary evidence.

KO requested an Order to keep the security deposit of \$412.50 to offset against their monetary claim. KO also requested to recover the filing fee of \$50.00 from the tenants.

The tenant MR gave testimony on behalf of the tenants and testified that they did give their notice to end tenancy on April 01, 2015 but one day should not make any difference to the landlord as the landlord did not advertise the unit until April 09, 2015.

The tenants disputed the landlord's claim for liquidated damages. MR testified that the landlord did not do anything they were supposed to do in the unit and as they put the

wrong date on the tenancy agreement the landlord cannot hold the tenants to the liquidated damages clause as the tenancy would have ended on May 31, 2014.

The tenants disputed the landlord's claim for late fees. One of the landlord's agents had informed the tenants at the start of the tenancy that it would not be a big deal if the tenants paid their rent a few days late in any month.

The tenants disputed the landlord's claim for damage to the blind and the closet door. MR testified that the slats just fell out of the blinds as they were a cheap type of blind and not through misuse. The closet door was not broken the door had just come off its track. MR was going to fix this but did not do so as they were fed up with the landlord.

MR testified that he does not dispute the landlord's claim to keep the security deposit.

KO testified that the tenants would not have been told it was not a big deal if they paid rent late. The tenants were given notice of the late fees owed and the landlords tried to help the tenants by giving them different options for ways to pay their rent on time.

Both parties had opportunity to cross examine the other party but declined this opportunity.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim for a loss of two weeks rent for May, 2015; I refer the parties to s. 45(1) of the *Act* which states:

45 (1) *A tenant may end a periodic 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, and

(b) 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.

(2) 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.

MR argued that as the landlord put the wrong year on the tenancy agreement and therefore this made the agreement invalid. I have considered this argument and find when the tenants entered into this agreement it was signed on May 30, 2014 and clearly states the length of the tenancy is for one year. Although I agree the landlord did put the end date as May 31, 2014 instead of 2015. Any reasonable person would understand that this was an obvious error as the tenancy could not possibly end before it started on June 01, 2014. I find therefore that this error does not make the tenancy agreement invalid and therefore the earliest the tenants could end the tenancy would be May 31, 2015.

If tenants end the tenancy before the end of the fixed term then the tenants are reasonable for rent for the unit until either the end of the fixed term of the tenancy or the date the landlord re-rents the unit. As the landlord re-rented the unit on May 15, 2015 it is my decision that the tenants must pay rent for the first two weeks of May to an amount of **\$412.50**.

With regard to the clause concerning liquidated damages. As the tenants ended the tenancy prior to the end of the fixed term then the landlord is entitled to recover

liquidated damages as indicated under clause one of the addendum to the tenancy agreement of **\$412.50**.

With regard to the landlord's claim to recover \$25.00 for late fees for December, 2014; I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

7 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

I have reviewed the tenancy agreement and find there is a clause contained in the addendum to the agreement that provides for an administrative fee for late fees. Consequently, pursuant to s. 7(1)(d) of the regulations I find the landlord is entitled to recover **\$25.00** in late fees for December, 2014.

With regard to the landlord's claim for damage to the blinds and a mirrored closet door, I have considered the information provided on the move in and move out inspection reports. The purpose of completing these reports in the presence of the tenant is to determine what damage was caused during the tenancy. The tenant in attendance at the move out report has checked the box on the report and has written that they do not agree that the report fairly represents the condition of the rental unit for the following reasons. The tenant has written that they are willing to cover the costs for the late fees and broken slats for blind although they should be wear and tear as not of good quality. The tenant has also written that they are willing to cover the cost of broken closet door even though upon sliding it open the plane fell apart which caused the door to drop and then crack the glass in the upper left corner.

I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The landlord has shown that the damage to the blinds and closet door exists; however, the landlord has not shown that this damage happened solely because of the actions or neglect of the tenants in violation of the *Act* or agreement. If the blinds were of a cheaper variety which did not stand up to normal usage then I must consider this to be normal wear and tear. Furthermore, if the closet door workmanship did not stand up to normal usage and caused the door to fall out when the tenant slide it open then I cannot conclude that the door was damaged through the tenants' actions or neglect. Without further corroborating evidence from the landlord to support their claim that the blinds and closet door were damaged through the tenants' actions or neglect I must dismiss the landlord's claim for damages without leave to reapply.

I Order the landlord to keep the tenants' security deposit of \$412.50 in partial satisfaction of the landlord's claim for loss of rent pursuant to s. 38(4)(b) of the *Act*.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent for May, 2015	\$412.50
Liquidated damages	\$412.50
Late fee for December, 2014	\$25.00
Filing fee	\$50.00
Less security deposit	(-\$412.50)
Total amount due to the landlord	\$487.50

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$487.50**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the 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: October 08, 2015

Residential Tenancy Branch

