



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, 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, 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; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The landlord was permitted to amend her application for a monetary award from the amount of \$1755.00 to \$852.50 plus recovery of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage or loss arising out of this tenancy?

Is the landlord entitled to retain all or a portion of the tenant's security deposit towards any monetary award?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Both parties testified that this month to month rental began in February 1, 2009 and continued, with a rental amount of \$900.00 per month, until June 30, 2015. At that time,

the tenant vacated the residence. The landlord testified that she continues to hold the \$450.00 security deposit paid by the tenant on February 1, 2009. The tenant vacated the rental unit prior to the June 30, 2015 end of the tenancy term. He testified he could no longer tolerate the conditions within the unit.

Both parties agree that, at the end of the tenancy, a condition inspection was done and a report completed. The parties disagree with respect to the contents of that report. The tenant ultimately refused to sign the condition inspection report at move-out and did not receive a copy. At this hearing, the tenant testified that the condition inspection report was blank when he was asked to sign it: he testified the landlord's representative advised that he would fill the report out later. The landlord's representative did not testify at this hearing.

The landlord applied for an \$832.50 monetary award. In the original application, the landlord sought a larger amount. She amended the amount by notice prior to hearing, clarifying at the hearing that the actual costs had been less than originally anticipated by the landlord. The landlord sought to retain the tenant's security deposit towards any monetary award.

The landlord testified that; the unit was "about 50% dirty" when the tenant moved out; that "fairly extensive clean-up" was required; and that there was a hole in the living room ceiling. The landlord was provided an opportunity to give a thorough breakdown of the damage and loss incurred by the landlord. The landlord was unable to provide a breakdown of the amounts sought from the tenant beyond the payroll sheets submitted to provide the time estimate for the repairs and clean-up of the unit at the end of this tenancy.

Date	Item	Amount
June 29	'Repair, replace in unit'	\$137.50
Aug 19	Drywall repairs	192.50
Sept 2	'Repair, replace in unit'	275.00
Sept 2	'Repair, replace in unit'	247.50
	Recovery of Filing Fee for Application	50.00
	Total Monetary Order Sought by Landlord	\$902.50

The tenant submitted digital evidence with 25 photographs. He testified that these were taken on the day that he moved out but represented the condition of the rental unit over the course of the 6 year tenancy. He testified that he had requested repairs and improvements over the course of his tenancy and very little action had been taken by

the landlord in response. The tenant did not submit any documentary evidence (letters or otherwise) to support the claim that he had made repair requests of the landlord. He explained in his testimony that this was the first time he had ever rented and he was too trustworthy to think of making records of his requests.

The landlord, referring to the records in her possession, testified that she had no documentation of requested repairs. The landlord also testified that they retain a company who regularly addresses pest control issues and any pest-related concerns would have been addressed immediately.

The tenant provided a witness to testify at this hearing. That witness, the tenant's step-father provided the following evidence;

- the witness is a journeyman carpenter and worked in construction his entire life;
- the witness cleaned the tenant's unit on move-out;
- that the cleaning was near complete except the kitchen area;
- the witness attempted to return to clean the kitchen in the afternoon after getting further materials but was not permitted to go back inside;
- there was ongoing concerns regarding the repair of the unit during the tenancy;
- the witness had attempted to help address an issue of limited to no hot water at times in the unit;
- there were live bugs in the carpet and it was disgusting;
- there was mould in some areas of the rental unit;
- the witness spoke with the plumber who attended to the residence regarding the hot water;
- the witness believed that a new hot water tank was needed for the residential premises;
- there were renters from several different units moving out that day;
- the witness saw that many renters for different units were filling the residential premise dumpsters and they were very full that move-out day;
- the tenant and the witness had to leave some discarded items from the rental unit beside the dumpster for pick-up;
- the witness was present with the tenant for the condition move-out inspection;
- the landlord attempted to have the tenant sign the condition inspection form before it was filled out stating he would fill it out later; and
- the witness advised the tenant not to sign the report under these circumstances.

The landlord testified that "there may have been a few others" [tenants from other units] moving out the same day as the tenant/respondent but she did not believe that the dumpsters were overflowing so that items could not be placed inside.

Analysis

The landlord sought a monetary order for damage to the rental unit and to retain the tenant's security deposit to satisfy that order. 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 section 67 of 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 landlord claims the tenant left a hole in the interior of the residence requiring repair. She also testified that the tenant did not leave the residence clean. The landlord did not provide photographic evidence from the start or the end of tenancy. The landlord did not provide undisputed documentary evidence in the form of condition inspection reports at the start or the end of tenancy. She submitted payroll information that repairs were done to the rental unit after the tenant vacated the unit.

The tenant claims that the damage existed prior to the start of his tenancy and was unrepaired by the landlord over the course of his tenancy. Given the conflicting testimony regarding the state of the unit at move-out, a determination regarding this matter hinges on a determination of credibility. In addition to the manner and tone ('demeanour') of the party's evidence, I have considered their content, and whether it is consistent with the other evidence provided for this hearing.

The tenant's demeanor during the hearing has convinced me of his credibility. He answered all questions asked of him in a calm and candid manner, and never wavered in his version of events. The tenant went so far as to provide photographs and candid testimony that showed damage to the unit. The tenant also made some important admissions, including the fact he should have created records of his complaints and that he didn't complete the clean-up within the unit. I note that both the landlord and the tenant were reasonable in their tone and manner during this hearing.

The landlord's evidence, however, was mainly based on her testimony with limited documentary evidence in support. During the course of the tenant's testimony, there were points that the landlord conceded she had limited knowledge of, including the state of the dumpster on the day of move-out. While I do not doubt the honesty of the landlord, I note that she was not the landlord representative who dealt with the tenant directly at move-out and did not have first-hand knowledge of all of the events related to

the end of this tenancy. I find that nothing in the landlord's testimony or evidence revealed inconsistency in the version put forward by the tenant.

I found that the tenant's witness was both credible and helpful in determining this matter. He provided straight forward testimony that did not always flatter the tenant however he provided detailed and logical testimony to support the tenant's claim that the unit was in a state of disrepair throughout his tenancy.

I have considered the credibility of both party's testimony as well as the burden of proof, which falls to the landlord when seeking a monetary order. I accept the tenant's testimony, supported by his witness and other evidence with respect to the state of the unit prior to his move-out. I find the landlord's testimony lacking in sufficient evidence to support the claim in this instance.

I also note that once all other elements of a claim under section 67 are proved, a claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. I note that there are some limits to the nature of the landlord's financial evidence produced. While the pay information submitted by the landlord referenced the tenant's unit, there are no details as to the nature of the repairs or work done.

With respect to the condition of the rental unit, section 37(2)(a) of the *Act* provides that the tenant must leave the rental unit reasonable clean and undamaged except for reasonable wear and tear. This tenancy began in February 2009 and continued for 6 years and 4 months. During the course of that time, one can expect a certain level of wear and tear to the unit.

In reviewing the materials submitted by the tenant and corroborated by his witness testimony, I find that the tenant resided in a rental unit in ill-repair. I find that any further damage was a result of deterioration and not as a result of the neglect or deliberate damage of the tenant. The rental unit was in poor shape in 2009 and a normal amount of wear and tear took place over the course of the tenancy. I find that the condition inspection report was not created or distributed in accordance with section 35 of the *Act*. The landlord has not proved, on a balance of probabilities that the tenant was responsible for the damage in the unit or any costs incurred by the landlord at the end of the tenancy.

Given all of the evidence, I find the landlord is not entitled to any monetary award as requested. The landlord's application is dismissed without leave to reapply. As the landlord has not been successful in this application, I find they are not entitled to recover the filing fee from the tenant.

Conclusion

I dismiss the landlord's application in its entirety. I order the security deposit returned to the tenant with any interest payable.

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: December 14, 2015

Residential Tenancy Branch

