



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order 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; and
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 11 minutes. The landlord's agent, TV ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the property manager and the managing broker for the landlord company named in this application and that she had authority to speak as an agent on behalf of the landlord company at this hearing.

The landlord testified that she served each of the tenants with a separate copy of the landlord's application for dispute resolution hearing package ("Application") on July 22, 2015, by way of registered mail. The landlord provided Canada Post receipts with tracking numbers as proof of service. The landlord testified that the applications were mailed to the tenants' written forwarding address, as provided by the tenants on their move-out condition inspection report on July 1, 2015. The landlord provided a copy of the report for this hearing. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served, at a forwarding address provided by them, with the landlord's Application on July 27, 2015, five days after their registered mailings.

Issues to be Decided

Is the landlord entitled to a monetary order 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 recover the filing fee for this application from the tenants?

Background and Evidence

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

The landlord confirmed that this tenancy began on July 1, 2014 and ended on June 30, 2015, pursuant to a fixed term tenancy agreement. Monthly rent in the amount of \$4,400.00 was payable on the first day of each month. A security deposit of \$2,200.00 was paid by the tenants and the landlord continues to retain this deposit. The landlord provided a copy of the written tenancy agreement for this hearing. According to the landlord, the rental unit is a three-level house that has five bedrooms and four bathrooms, and is approximately 4,200 square feet total.

The landlord explained that move-in and move-out condition inspection reports were completed on July 1, 2014 and July 1, 2015. The landlord provided copies of both reports. The landlord stated that the tenants refused to sign the move-out condition inspection report. The landlord's application was filed on July 16, 2015. The landlord confirmed that she did not receive written permission from the tenants to retain any amount from their security deposit.

The landlord seeks \$566.47 for carpet cleaning. The landlord stated that the tenants did not clean the carpets when they vacated the rental unit, as the carpets were dirty. The landlord claimed that the tenants lived in the unit for at least a year and that they are required by the *Act* and their tenancy agreement to clean the carpets. The landlord provided a receipt for the above amount, dated for July 3, 2015, for carpet cleaning that the landlord performed on behalf of the tenants. The landlord noted that carpet cleaning was required in the move-out condition inspection report. The landlord confirmed that the tenants provided a blank receipt, dated June 30, 2015, from a cleaning company, stating that it was for carpet cleaning. The landlord provided a copy for this hearing. The landlord claimed that she attempted to contact the company to determine if they cleaned the carpets in the rental unit, but the company never returned her calls. She stated that the cleaning was likely not for the carpets, as the carpets were still dirty when the tenants left.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. In this case, to prove a loss, the landlord must show that the tenants caused damage beyond reasonable wear and tear, satisfying 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 tenants 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.

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. I find that the landlord is entitled to \$566.47 for carpet cleaning. The landlord provided a receipt for the above amount and noted the carpet cleaning on the move-out condition inspection report. Clause 2.14 of the tenancy agreement requires the tenants to clean the carpet at their own expense at the end of this tenancy. Residential Tenancy Policy Guideline 1 indicates that the tenants will be held responsible for steam-cleaning or shampooing carpets after a tenancy of one year, which applies in this case. I find that the tenants failed to prove that they completed carpet cleaning, as their cleaning receipt was blank with no information about the work done. The tenants did not appear at this hearing to provide evidence about the carpets. Therefore, I find that the tenants were responsible to complete this cleaning, that it was necessary to do so and that they failed to clean the carpet upon vacating. I find that the amount for carpet cleaning is reasonable, given the large size of the house.

As the landlord was successful in this Application, I find that the landlord is entitled to recover the \$50.00 filing fee from the tenants.

The landlord continues to hold the tenants' security deposit of \$2,200.00. Over the period of this tenancy, no interest is payable on the landlord's retention of the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$616.47 from the tenants' security deposit, in full satisfaction of the monetary award.

Residential Tenancy Policy Guideline 17 states that the return of the balance of a security deposit can be ordered, regardless of whether the tenant has applied for arbitration for its return. Accordingly, I order the landlord to return the remainder of the tenants' security deposit in the amount of \$1,583.53 to the tenants.

Conclusion

I order the landlord to retain \$616.47 from the tenants' security deposit, in full satisfaction of this monetary award.

I order the landlord to return the remainder of the tenants' security deposit in the amount of \$1,583.53 to the tenants. I issue a monetary order in the tenants' favour in the amount of \$1,583.53 against the landlord. The landlord must be served with this Order as soon as possible. Should the landlord 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: January 08, 2016

Residential Tenancy Branch

