



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, MNSD, MNDC, FF

Introduction

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

- 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 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 its filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 1343 in order to enable the tenant to connect with this teleconference hearing scheduled for 1330. The landlord's agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The agent testified that the landlord served the tenant with the dispute resolution package on 27 July 2015 by registered mail. The landlord provided me with a Canada Post customer receipt that showed the same. The agent testified that the mailing was sent to the forwarding address provided by the tenant. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

Landlord's Amendment before Hearing

The landlord amended its application on 15 December 2015 to reduce the amount of compensation it sought from \$875.00 to \$350.00. This reflects an amendment to claim for ten hours of cleaning only.

Issue(s) to be Decided

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

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

This tenancy began 15 July 2011. The parties entered into a written tenancy agreement dated 16 July 2011. The tenancy ended 2 July 2015 pursuant to a 1 Month Notice to End Tenancy for Cause. The landlord continues to hold the tenant's security deposit in the amount of \$325.00, which was collected at the beginning of the tenancy.

There was no condition inspection report created at the beginning of this tenancy.

The agent testified that at the end of the tenancy there did not appear to be any attempt by the tenant to clean the rental unit. The agent testified that the rental unit was covered in a sticky substance. The agent testified that it took ten hours for the landlord's employee to clean the rental unit. The agent testified that the landlord charges an hourly rate of \$35.00 for cleaning services.

The agent testified that on the day of the hearing, the tenant's mother attended at the landlord's office to provide \$400.00. The landlord submits that this payment is admission that the tenant owes compensation to the landlord.

The agent testified that the tenant caused damage to the rental unit in excess of the amounts for which the landlord has claimed.

Analysis

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" states:

The tenant is 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. ...

On the basis of the agents sworn and uncontested testimony I find that the tenant failed to return the rental unit to the landlord in a condition that complied with subsection 37(2) of the Act. In particular, I find that the tenant did not adequately clean the rental unit. The tenant has breached subsection 37(2) of the Act.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

On the basis of the agent's sworn and uncontested testimony, I find that the landlord incurred labour costs of \$350.00 in order to clean the rental unit as a result of the tenant's breach. I find that the landlord's costs are reasonable given the rental unit's condition as described by the agent.

As the landlord has been successful in this application, it is entitled to recover the filing fee paid from the tenant.

The landlord has applied to retain the tenant's security deposit. The landlord's right to claim for a loss is not extinguished by the lack of a condition inspection at the commencement of the tenancy. I order that the landlord is entitled to retain the tenant's security deposit in partial satisfaction of the monetary order.

Conclusion

The landlord is entitled to the amount of \$75.00 under the following terms:

Item	Amount
Cleaning Costs	\$350.00
Offset Security Deposit Amount	-325.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$75.00

I decline to provide the landlord with a monetary order as the landlord received \$400.00 from the tenant's mother. With respect to the amount received by the landlord from the tenant's mother in excess of the award made in this application, it remains between the parties to establish what amount, if any, should be retained by the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: January 12, 2016

Residential Tenancy Branch

