



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ADVENT REAL ESTATE SERVICES LTD.
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* ("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;
- authorization to retain the tenants' 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 tenants, pursuant to section 72.

The landlord's agent, LD ("landlord") and the two tenants, male and female, attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 57 minutes in order to allow both parties to fully present their submissions.

The tenants 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 both tenants were duly served with the landlord's Application.

I amend the landlord's application pursuant to section 64(3)(c) of the *Act*, to increase the landlord's monetary claim from \$634.70 to \$848.40. The tenants confirmed that they received the landlord's written evidence package outlining the actual rather than estimated costs for damages and that they had notice that the landlord was attempting to seek the above increased amount from them at this hearing.

Issues to be Decided

Is the landlord entitled to a monetary award 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 tenants' security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this Application?

Background and Evidence

While I have turned my mind to 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 are set out below.

Both parties agreed that this tenancy began on June 1, 2013 and ended on July 31, 2015. As per the written tenancy agreement, monthly rent in the amount of \$1,695.00 was payable on the first day of each month at the beginning of this tenancy. Both parties agreed that notices of rent increase were issued to the tenants but neither party could confirm the exact amount of monthly rent due at the time that the tenants vacated the rental unit. Both parties agreed that a security deposit of \$847.50 and a pet damage deposit of \$847.50 were paid by the tenants and the landlord returned the pet damage deposit within 15 days of the end of the tenancy. Both parties agreed that the landlord continues to retain the tenants' security deposit. A copy of the written tenancy agreement was provided for this hearing.

Both parties agreed that move-in and move-out condition inspection reports were completed for this tenancy. Both parties agreed that the tenants provided a written forwarding address to the landlord on July 31, 2015 by way of the move-out condition inspection report. The landlord's Application was filed on August 13, 2015.

The landlord seeks a monetary order of \$848.40 total. The landlord seeks \$200.00 for a strata by-law violation, \$292.95 for disposal of furniture, \$188.94 for general cleaning and \$166.51 for a bathroom glass shelf replacement. The landlord also seeks to recover the \$50.00 filing fee paid for the Application.

The landlord seeks \$292.95 for disposal of furniture from the common area of the rental property. The landlord provided an invoice for this amount. The landlord provided a copy of a notice which is posted in the rental building indicating that no furniture may be left anywhere on the common property including the grounds. It states that these items must be removed by the individual owner or resident of the strata lot. It warns that fines may be issued against the strata lots in violation of the strata bylaws. Strata bylaw 41(4), provided by the landlord, indicates that a resident must pay a refundable damage deposit of \$250.00 prior to any move to account for, among other things, cleaning common areas attributable to the resident and that all fines will be deducted from this deposit. The landlord also provided a copy of a letter, dated August 5, 2015, from the strata company attaching a copy of the invoice for \$292.95, indicating that the removal of junk left on the common property had to be done for the tenants' rental unit and charging this amount to the owner of the strata lot.

The landlord provided an email, dated July 29, 2015, from the building manager indicating that junk furniture was left by the tenants on the common property on July 27, 2015 at night and some items were picked up on July 29, 2015, while other items had to be arranged by the building manager to be removed later. There was no indication in the email of what specific furniture belonged to the tenants. The email references photographs taken of the tenants' furniture in the common area. The landlord provided coloured photographs but the landlord testified that she did not know which items were the tenants' furniture. The landlord did not call the building manager as a witness at this hearing to authenticate the email or to testify regarding her observations.

The tenants acknowledged that the tall cabinet, small cabinet and sectional couch in the landlord's coloured photographs were theirs and that they left these on the common property on July 27, 2015 at night. They stated that other items, such as a bookshelf and mattresses were not theirs but other residents' items. The tenants claimed that they saw individuals on the property take the tall and small cabinets on the same night they left the items outside on July 27, 2015. They noted that they arranged for the City to remove the sectional couch on July 28, 2015 and that the male tenant saw that the couch had been taken sometime between 6:00 and 7:00 a.m. on July 28, 2015. The building manager indicated in her email that the City only comes on Wednesdays, so the tenants' furniture could not have been removed on Tuesday, July 28, 2015.

Analysis

Section 67 of the *Act* requires a party making a claim for damage or loss to prove the claim, on a balance of probabilities. In this case, to prove a loss, 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 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.

I award the landlord \$200.00 for the strata bylaw fine for the tenants not booking the building elevator for their move. The tenants agreed that they owed this amount during the hearing.

I award the landlord \$79.01 of the \$166.51 total, sought for the glass shelf replacement in the bathroom medicine cabinet. The tenants agreed that their hired cleaners broke the shelf but disputed the landlord's bill, stating that the time and travel cost of \$137.50 was too high for three trips to the unit. The tenants agreed to pay \$74.84 at the hearing including for the materials, mileage and 1/3 of the time and travel cost. I find the above amount of \$79.01 to be a more reasonable cost than the total invoice of \$166.51. I accept the shelf cost of \$14.01 and the mileage cost of \$15.00 as noted in the landlord's invoice. I have reduced the time and travel cost to \$50.00 total for two trips at \$25.00 per hour. I find that the labourer had to make at least two trips to measure the area and then purchase the shelf and install it.

I award the landlord \$82.95 for disposal of furniture from the common area of the rental property. The landlord provided an invoice for \$292.95. I award only the minimum disposal charge of \$79.00 as indicated on the invoice plus 5% GST tax of \$3.95. I find that the tenants violated the landlord's posted notice not to leave furniture in the common property, even if it was for a short time from July 27 to 28, 2015. I find that the notice clearly indicates that fines can be charged by the strata company and that an invoice together with a strata violation letter was provided by the landlord. However, I award a reduced amount for the invoice because I find that the landlord failed to prove that all items in the coloured photographs provided were the tenants' furniture. I find that the mattresses were not the tenants' furniture and the landlord's invoice shows a charge of \$60.00 for three mattresses and a charge of \$140.00 for 4 cubic yards at \$35.00 each, for items that the landlord could not prove were the tenants' furniture.

I dismiss the landlord's claim of \$188.94 for general cleaning of the rental unit. I accept the tenants' testimony that they performed sufficient cleaning of the rental unit by hiring professional cleaners to clean for four hours. I also accept the tenants' testimony that they performed their own cleaning as well as additional cleaning after the landlord told them to clean certain areas including the stove, oven and shower area. I find that the landlord failed to provide sufficient photographic evidence to show that the unit was dirty beyond reasonable wear and tear; the landlord provided black and white photographs where the dirty areas could hardly be seen. I find that the landlord was attempting to impose an unreasonable standard for cleaning by focusing on microscopic dirt on the stove, oven, windows and shower stall door that can be expected as reasonable wear and tear.

As the landlord was only partially successful in this Application, I find that it is not entitled to recover the \$50.00 filing fee from the tenants.

Security Deposit

Section 38 of the *Act* requires the landlord to either return the tenants' security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenants' provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenants' written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy (section 38(4)(a)) or an amount that the Director has previously ordered the tenants to pay to the landlord, which remains unpaid at the end of the tenancy (section 38(3)(b)).

Although the landlord has not yet returned the tenants' security deposit, I find that the landlord applied to retain the deposits on August 13, 2015, within 15 days of the end of the tenancy and the tenants providing a written forwarding address on July 31, 2015. Therefore, I find that the tenants are not entitled to double the value of their security deposit from the landlord.

The landlord continues to hold the tenants' security deposit, totalling \$847.50. Over the period of this tenancy, no interest is payable. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain \$361.96 from the tenants' security deposit in full satisfaction of the monetary award. I order the landlord to return the remaining \$485.54 from the security deposit to the tenants.

Conclusion

I order the landlord to retain \$361.96 from the tenants' security deposit in full satisfaction of the monetary award.

I issue a monetary order in the tenants' favour in the amount of \$485.54 against the landlord as follows:

Item	Amount
Tenants' Security Deposit	\$847.50
Award to Landlord for Strata Bylaw Violation	-200.00
Award to Landlord for Glass Shelf Replacement	-79.01
Award to Landlord for Disposal of Furniture	-82.95
Total Monetary Award	\$485.54

The tenants are provided with a monetary order in the amount of \$485.54 in the above terms and 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.

The landlord's application to recover the \$50.00 filing fee is dismissed without leave to reapply.

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: February 12, 2016

Residential Tenancy Branch

