



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BCIMC REALTY CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, 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, pursuant to section 67;
- authorization to retain 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.

The tenant did not attend this hearing, which lasted approximately 26 minutes. The landlord's agent, IL ("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 is the resident manager for the rental building and that she had authority to represent the landlord company named in this application as an agent at this hearing.

The landlord confirmed that the tenant was served with the landlord's application for dispute resolution hearing package ("Application") on October 5, 2015, by way of registered mail. The landlord provided a Canada Post receipt and tracking number with its Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the landlord's Application on October 10, 2015, five days after its registered mailing.

I amend the landlord's Application pursuant to section 64(3)(c) of the *Act*, to add a claim for a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* or tenancy agreement under section 67 of the *Act*. In the landlord's "details of the dispute section" of its Application, it indicated a claim of \$350.00 for a "lease break fee" and provided supporting evidence with its Application. This claim does not fall under damage, but rather a loss under the *Act* and tenancy

agreement, which the landlord failed to apply for. I find that the tenant had notice of the landlord's claim with the above details and supporting evidence. Therefore, I find no prejudice to the tenant in amending the landlord's Application.

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 tenant's 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 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 testified that this tenancy began on March 1, 2015 and ended on September 30, 2015. The landlord confirmed that the tenancy was for a fixed term of one year ending on February 29, 2016, after which the tenant was required to move out of the rental unit. The landlord stated that the tenant provided written notice on August 20, 2015 to vacate the rental unit by September 30, 2015, which is earlier than the fixed term tenancy end date.

The landlord said that monthly rent in the amount of \$1,625.00 was payable on the first day of each month. A security deposit of \$812.50 and a FOB deposit of \$75.00 (collectively "deposits") were paid by the tenant and the landlord continues to retain these deposits. A copy of the written tenancy agreement was provided for this hearing.

The landlord confirmed that move-in and move-out condition inspection reports were completed for this tenancy with both parties present and signing the reports. The landlord stated that a written forwarding address was received from the tenant on September 30, 2015, on the move-out condition inspection report. The landlord said that she had written permission from the tenant, by way of the move-out condition inspection report, to retain \$1,380.00 for damages and losses, to be offset against the tenant's deposits. The landlord's Application was filed on October 5, 2015.

The landlord seeks a monetary order of \$1,380.00 plus the \$50.00 filing fee for the Application. The landlord seeks \$750.00 to replace and install a bathroom cabinet and sink, \$150.00 for general cleaning of the unit, \$130.00 for windows and blinds cleaning, and \$350.00 for liquidated damages for breaching the fixed term tenancy agreement.

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 tenant 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.

Liquidated Damages

In this case, the tenant breached the fixed term tenancy agreement and left before the end of the fixed term. Residential Tenancy Policy Guideline 4 provides information regarding liquidated damages. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. I find that the cost of re-renting a unit to new tenants is part of the ordinary business of a landlord. Throughout the lifetime of a rental property, a landlord must engage in the process of re-renting to new tenants numerous times.

At the hearing, the landlord was unable to justify the \$350.00 amount claimed, provide a breakdown of costs or indicate how the amount was a genuine pre-estimate of the loss. The landlord testified that she did not show this rental unit to any prospective tenants and she called the new tenant from a waiting list in order to occupy the rental unit as of October 5, 2015. The landlord said that a realtor was “probably” hired on the “weekend” and paid an “hourly rate” but no specific information was given about this. Although the \$350.00 amount is in the tenancy agreement and the tenant signed the move-out condition inspection report agreeing to this cost, I find that the landlord is not entitled to

it for the above reasons. Accordingly, I dismiss the landlord's claim of \$350.00 for liquidated damages.

Other Damages and Cleaning

I award the landlord \$130.00 for cleaning the windows and blinds in the rental unit. The landlord provided an invoice, dated October 1, 2015, for the above amount. The landlord indicated that cleaning was required in the move-out condition inspection report and the tenant agreed to pay this amount in the report. As per Residential Tenancy Policy Guideline 1, the tenant is "expected to leave the internal window coverings clean when he or she vacates" and "the tenant is responsible for cleaning the inside windows and tracks during, and at the end of the tenancy, including removing mould." I find that the tenant did not fully abide by the above guideline at the end of this tenancy and that the above amount is reasonable for windows and blinds cleaning.

I award the landlord \$150.00 for general cleaning of the rental unit. The landlord provided an invoice, dated October 1, 2015, for the above amount. The landlord indicated that cleaning was required in the move-out condition inspection report and the tenant agreed to pay this amount in the report. As per Residential Tenancy Policy Guideline 1, the tenant is required to maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit during the tenancy and the tenant is also "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." I find that the tenant did not fully abide by the above guideline at the end of this tenancy and that the above amount is reasonable for general cleaning.

I award the landlord \$750.00 for the replacement and installation of the bathroom cabinet and sink. The landlord provided an invoice, dated September 29, 2015, for \$777.00 cost but said she was only seeking the \$750.00 amount indicated in the move-out condition inspection report, which the tenant agreed to pay. The landlord said that the tenant washed his legs in the bathroom sink, that the entire cabinet and sink became loose and that there was water damage to the entire cabinet, such that it had to be replaced. The landlord provided coloured photographs to show the damage. I find that the tenant caused damage to the bathroom cabinet and sink, such that it had to be replaced.

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

The landlord continues to hold the tenant's security deposit, totalling \$812.50. Over the period of this tenancy, no interest is payable on the security deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's security deposit of \$812.50 as well as the \$75.00 FOB deposit, in partial satisfaction of the monetary award.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$192.50 against the tenant. The tenant must be served with this Order as soon as possible. Should the tenant 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: April 19, 2016

Residential Tenancy Branch