



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOMUS MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, MNR, MNSD

Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- a monetary order for unpaid rent;
- a monetary order for compensation for loss;
- a monetary order to keep all or part of the security deposit; and
- recovery of the filing fee paid for this application from the tenant.

The landlord and tenant appeared at the teleconference hearing and gave affirmed testimony. During the hearing both the landlord and tenant were given a full opportunity to be heard, to present sworn testimony, submit documentary evidence and make submissions. A summary of the testimony and evidence is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

The tenant submitted late evidence to the Residential Tenancy Branch. On November 24, 2016 the tenant submitted a letter from Witness K.M. dated November 23, 2016; and a letter from Witness G.A. dated November 23, 2016. These witnesses did not attend the hearing. On November 25, 2016, the tenant also submitted 29 pages of digital evidence on a USB which included 25 photos of the rental unit.

The tenant stated that although she submitted this evidence to the Residential Tenancy Branch late, she served the landlord on November 23, 2016 (the 7th day before the hearing) by placing the evidence in the landlord's mail slot at the address for service listed on the landlord's application.

The landlord stated that since filing her application, her address for service changed after she moved from the address she had given for service in her application. The landlord did not amend her application with a new address for service.

The landlord stated that she did not receive the tenant's evidence package prior to the hearing and she had not had an opportunity to review it. The landlord did acknowledge receiving photos that the tenant had sent her boss via email, however, these photos were not the exact same package that were submitted to the branch as the landlord had more photos than the USB.

The landlord was made aware of the specific contents of the two letters and the nature of the digital evidence that was submitted. I heard submissions from the landlord and the tenant in considering the issue of the admissibility of the tenant's evidence package. Before rendering a decision, however, the landlord consented to the admission of the USB digital evidence and the two witness letters submitted by the tenant. As such, I was not required to make a decision as to whether or not to admit the evidence and/or order an adjournment.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for unpaid rent pursuant to s.67 of the *Act*?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under s.67 of the *Act*?
- Is the landlord entitled to a monetary order to keep all or part of the security deposit pursuant to s.38 of the *Act*?; and
- Is the landlord entitled to recover the filing fee for this application from the tenant pursuant to Section 72 of the *Act*?

Background and Evidence

The undisputed testimony of the landlord and tenant established that the tenant moved into the rental unit on February 20, 2015 pursuant to a tenancy agreement that was signed on February 18, 2015. The tenancy agreement shows the start of the tenancy as March 1, 2015 with a fixed term ending on February 29, 2016. The parties agreed that the rent at the start of the tenancy was \$875.00 plus \$20.00 for a parking fee for a total amount of \$895.00. The tenant paid a security deposit in the amount of \$437.50 on February 18, 2015. The landlord and tenant acknowledged that they completed a move in inspection on February 20, 2015.

On March 1, 2016 the rent was increased to \$890.00 so that the total monthly amount due was \$910.00, inclusive of the \$20.00 parking fee.

Both parties agree that on May 20, 2016, the tenant gave the landlord a signed written notice to end the month to month tenancy effective May 31, 2016. The tenant moved out of the rental unit on May 31, 2016. The tenant did not pay rent for June, 2016.

The landlord and tenant acknowledged completing a move out inspection on May 31, 2016. While the tenant signed the condition inspection report at the time of inspection, the tenant and the landlord confirmed that the tenant did not see the checklist attached before signing. The checklist sets out the landlord's notes as to the condition of the rental unit. The landlord acknowledged that the checklist was completed by her after the inspection in the absence of the tenant.

Testimony of the Landlord:

After the tenant moved out, the landlord took steps to replace the carpet underlay which had been a source of complaint by the tenant. The landlord testified that in replacing the underlay, new carpets were installed as the cost of installing new carpeting was no different than installing the old carpeting. The landlord testified that she waited for the tenant to vacate the unit first before commencing the work to make the job easier. The landlord posted an ad on the internet on June 1st looking for a new tenant. The landlord found a new tenant who moved into the rental unit on June 15, 2016. The landlord is seeking a monetary order for unpaid rent for half of June 2016 on the basis of the timing of the tenant's notice, which was less than 30 days.

The landlord is also seeking compensation for \$40.00 for cleaning the rental unit after the tenant had moved out. The landlord is claiming for two hours of cleaning that she personally did, at a rate of \$20.00 per hour.

The landlord testified that she cleaned dust off tops of baseboards, the medicine cabinet and vanity doors; applied cleaner to the silicone bead in the tub; wiped the plugs and light cover plates; scrubbed and washed moss off the balcony railings and deck; scrubbed and washed grease off the inner surface of the range hood, light cover and exhaust fan; and washed the bathroom floor which had curly hair and dust, especially around the toilet and under the vanity. The landlord testified that she spent more than two hours cleaning, however, she is not looking to be compensated for all her time.

Testimony of the Tenant:

The tenant is disputing the landlord's claim for payment of rent for half of June, 2016 and for the cost of cleaning the rental unit.

With respect to the rent for June, 2016, the tenant testified that given the market conditions, the landlord could have found a tenant to move in on June 1st. The tenant complained that the landlord should have posted the rental ad sooner once notice was given; that the landlord could have started replacing the underlay before the tenant had moved out; and that the carpets did not need replacing. The tenant also complained that the landlord refused to allow the tenant to stay for an extra night on May 31, 2016 when the tenant requested to do so.

The tenant disputed the landlord's claim for the \$40.00 cleaning fee on the basis that no cleaning was required as the tenant had cleaned the unit. In support of the tenant's claim, the tenant had 25 photos of the rental unit and letters from two witnesses dated November 23, 2016 from Witness K.M. and Witness G.A.. Witness K.M. identifies herself as a former landlord and states in her letter that she was present for the move out inspection and that the entire apartment was clean and in great condition. The only fault that Witness K.M. says that the landlord found was dirt on top of the ceiling fan in the dining room which was wiped off while she and the tenant were there.

The second letter from Witness G.A. sets out his observations while helping the tenant move out. Witness G.A.'s letter mainly speaks to the issue of the rental unit needing a new carpet underlay which is not disputed nor part of the landlord's claim.

The tenant did, however, acknowledge that the balcony did need some further cleaning although the tenant denied that it was her responsibility stating that pollen was an ongoing issue.

Analysis

Based on the above, the testimony and documentary evidence, and on a balance of probabilities, I find as follows.

UNPAID RENT

Section 45(1) of the *Act* permits a tenant to end a month to month tenancy by providing the landlord with not less than one months notice on a day before the day in the month that rent is due.

Pursuant to Section 52 of the *Act*, in order to be effective notice, the notice must be in writing; signed and dated by the tenant; give the address of the rental unit; and state the effective date of the notice.

In this case, both parties agree that the tenant gave notice that complied with Section 52 of the *Act*, on May 20, 2016 with an effective date of May 31, 2016. I find that the effective date of May 31, 2016, however, fell short of the required one months notice under the *Act*.

Section 53 of the *Act* automatically corrects incorrect effective dates in the notice to the earliest date that would comply with the *Act*. In this case, the earliest effective date would be June 30, 2016. Accordingly, the earliest the tenancy could end was June 30, 2016 and I find the tenant is responsible for June's rent.

Policy Guideline #5 sets out the landlord's responsibility to mitigate losses as follows:

Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date the notice takes legal effect.

Efforts to minimize the loss must be "reasonable" in the circumstances. The party who suffers the loss need not do everything possible to minimize it.

I find that the landlord was not required to find a tenant to move in on a date earlier than June 30, 2016, the date the tenant's notice took legal effect. However, the landlord did find a new tenant who moved in on June 15, 2016 thereby reducing what the tenant would otherwise be required to pay for June's rent. As there was no legal obligation on the landlord to find a new tenant to move in before July 1, 2016, I am satisfied that the landlord's efforts to re-rent the unit were reasonable in the circumstances. As the landlord received rent from the new tenant for June 15th, I find that the landlord is entitled to pro-rated rent from the tenant for the period of June 1, 2016 to June 14, 2016 in the amount of \$424.67.

CLEANING

S.37(2) of the *Act* requires the tenant to leave the rental unit “reasonably clean, and undamaged except for reasonable wear and tear.

The onus is on the party seeking compensation to present compelling evidence of the damage or loss in question and the value of same.

As a result of the landlord not completing the condition inspection report checklist in the presence of the tenant at the time of the inspection on May 31, 2016, the checklist itself is insufficient proof of the condition of the rental unit as it is disputed by the tenant. I cannot rely upon the tenant’s signature on the condition inspection report as proof of the condition of the rental unit on move out in these circumstances.

The landlord is relying solely upon her oral testimony as to the condition of the rental unit to meet her onus. The landlord’s testimony is disputed by the tenant through oral testimony, photographs and a statement by Witness K.M..

The photos submitted by the tenant are of limited value in resolving the disputed testimony as the areas that are the subject of the landlord’s complaints aren’t so readily visible or not visible at all. I find, however, that those areas that are readily visible in the photographs do show the rental unit as being “reasonably clean”. This is consistent with the testimony of the tenant and Witness K.M.’s statements set out in her letter.

The one exception is the photograph of the deck that shows some green areas on the surface. The tenant acknowledged that the deck did need further cleaning although the tenant insisted that it was not due to the tenant’s negligence, but an ongoing pollen issue. I accept that the landlord was required to clean the deck and railing due to moss on the basis of the photograph.

Taking into account all the evidence before me, I find that the landlord hasn’t provided sufficient evidence to meet the onus on her to prove her full claim for \$40.00 for cleaning the rental unit after the tenant moved out. I find, however, that an hour of cleaning at \$20.00 is reasonable compensation for cleaning the deck and railing to remove the moss. As such, the landlord is entitled to a nominal amount of \$20.00 as compensation.

The landlord is seeking recovery of the \$100.00 filing fee for this application. As the landlord has met with substantial success in bringing her Application, I find that the landlord is entitled to the \$100.00 filing fee from the tenant.

The landlord is requesting to apply the tenant's security deposit in the amount of \$437.50 against the amounts owed by the tenant, which I allow.

Conclusion

The landlord is entitled to a monetary order in the total amount of \$110.17 as follows:

Unpaid Rent for June 1-14, 2016	\$ 427.67
Cleaning Deck & Railing	\$ 20.00
Filing Fee	\$ 100.00
SUBTOTAL	\$ 547.67
Less Security Deposit	\$ 437.50
TOTAL	\$ 110.17

The landlord is granted a monetary order in the amount of \$110.17 which must be served on the tenant as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 06, 2016

Residential Tenancy Branch