



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS
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* (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;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provide affirmed testimony. The landlord's agent (the landlord) stated that the tenant was served via Canada Post Registered Mail with the notice of hearing packaged on May 15, 2016. The tenant's agent (the tenant) confirmed receipt of this package. The landlord also stated that an amended application for dispute and the submitted documentary evidence was served via Canada Post Registered Mail on October 20, 2016. The landlord stated that both items were submitted and served on the same date. The tenant stated that both items were not received by the tenant. The landlord referred to page 40 and 41 of the submitted documentary evidence as confirmation of service. The tenant strongly disputed the service of these items. Both parties consented to the arbitrator reviewing the Canada Post website for service of these two items. After some clarification, the review showed that the landlord had served the package via Canada Post Registered Mail on October 2016. The details showed that Canada Post made two attempts after leaving a notice card to pick up the package. I find based upon the evidence provided by the landlord and the review of the Canada Post Website that the landlord had properly served the tenant with the amended application for dispute and the submitted

documentary evidence. As such, the hearing shall proceed based upon the amended application and I accept the landlord's submitted documentary evidence.

The hearing was adjourned on November 8, 2016 to be reconvened at a later time.

On January 8, 2017 the hearing was reconvened with both parties. The tenant requested an adjournment to allow her to respond to the evidence provided by the landlord. The tenant confirmed that she was able to access and get copies of the evidence provided by the landlord for the hearing, but strongly objected to allowing the landlord's evidence and requested that it be excluded from the hearing. The landlord disputed the adjournment request. When asked what documentary evidence she would need to gather to submit during an adjournment in response, the tenant was unable to provide any specific details of any documents. As such, in the absence of any actual documentary evidence required by the tenant to respond to the landlord's claim, the adjournment request is denied. The hearing proceeded with both parties providing submissions. During the hearing the tenant's agent was very disruptive by repeatedly interrupting the other party while they were providing submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

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

This tenancy began on May 1, 2015 on a fixed term tenancy ending on April 30, 2015 as shown by the submitted copy of the signed tenancy agreement dated March 25, 2015. The monthly rent was \$1,486.25 payable on the 1st day of each month. A security deposit of \$725.00 was paid on April 15, 2014 carried over from a previous tenancy agreement.

Both parties confirmed that they understood that the landlord's monetary claim was based upon the amended application for dispute of \$3,534.79. The landlord's monetary claim consists of:

\$1,338.75	Pest Control	Bed Bug Issue
\$440.00	Cleaners	Cleaning
\$222.60	Cleaners	Carpet Cleaning
\$133.88	Lock Smith	Changing Locks
\$674.56	Maintenance	Patch, Paint, repair screen door, replace light switches, drapes and curtain rod
\$625.00	Liquidated Damages	Breaching the material terms of the Lease
\$100.00	RTB	Filing Fee

The landlord stated that the tenant vacated the rental unit leaving it dirty, infested with bedbugs and damaged. The landlord also stated that the tenant breached the material terms of the tenancy agreement and ended the tenancy by over holding the rental unit past the end of the fixed term tenancy on April 30, 2016.

The landlord stated that the tenant had called a pest control service technician (C.W.) and reported that there were bedbugs. The landlord stated that the tenant had requested that only the bedroom be treated for bedbugs. The landlord claimed that the tenant was informed that "no warranty" would be provided for the bedbug treatment as this would be considered an incomplete treatment. The landlord stated that because of this the landlord had to effect bedbug treatment of the entire house later upon discovering that the bedbugs were still present. The landlord stated that the tenant failed to notify the landlord of the bedbug infestation and the treatment at the time of the occurrence causing the landlord to incur a bedbug treatment cost. The tenant disputed this claim stating that the tenant was not responsible for the bedbug issues. The tenant stated that bedbugs were present during the tenancy in August and that the landlord was informed of the issue as the pest control technician was referred for service by the landlord. The tenant stated that the bedbug issue was only present in the basement bedroom. The tenant argued that the treatment was ineffective as the bedbug issue returned in January 2016. The witness, C.W provided testimony that he was contacted by the tenant to inspect the premises and recommend a treatment. The witness confirmed that bedbugs were present in the downstairs bedroom and that he would not warranty any service as treatment for just the downstairs bedroom would be considered incomplete and that the bedbugs would eventually return. The witness clarified that by only treating the entire house would a warranty be given for the treatment service. The witness stated that he determined that the source of the bedbugs was localized in the bedroom basement. The witness stated that he was informed by the tenant, C. during the inspection that the likely source of the bedbugs was in the mattress in the basement bedroom. The landlord in support of this claim has submitted a copy of the invoice from

the pest control services company for \$1,338.75 dated February 3, 2016. I note that the invoice details a note:

Very Heavy bed bug activity found in downstairs back bedroom on bed and box spring. Bed Should be removed from home.

The landlord seeks a claim for \$440.00 for cleaning of the rental unit as the tenant vacated the rental unit leaving it dirty requiring cleaning. The landlord has submitted in support of this claim a copy of an invoice dated May 18, 2016 for 11 hours of cleaning. The landlord also relies upon the submitted copy of the completed condition inspection report for the move-in dated May 1, 2014 and 53 photographs taken of the rental unit at the end of the tenancy. The tenant stated that had she had an opportunity she would have provided a copy of a receipt for cleaning services that were performed at the end of the tenancy as well as photographs to document the condition of the rental unit.

The landlord seeks a claim for \$222.60 for carpet cleaning as the tenant vacated the rental unit leaving them dirty and stained. The landlord has submitted a copy of the invoice dated May 16, 2016 for \$22.60 for cleaning the carpet in 4 rooms, hall and stairs. The landlord also relies upon the 53 submitted photographs which show the carpets stained discolored in some areas of the carpet. The tenant dispute this claim stating that the landlord failed to conduct a new condition inspection report when the tenant assumed the tenancy from the previous tenants as per the noted condition inspection report dated May 14, 2014. The landlord argued that the tenant was one of the original tenants as part of that original tenancy and that this tenancy assumed responsibility of the condition of the rental unit as well as ownership of the \$725.00 security deposit.

The landlord seeks a claim of \$133.88 for the cost of rekeying the locks as the tenant failed to return the keys to the landlord. The landlord has submitted in support of the claim a copy of the invoice dated May 16, 2016 in which a locksmith attended onsite and rekeyed the locks of the rental unit. The tenant disputed this claim stating that the tenant would have returned the keys if he had a chance to.

The landlord seeks a claim of \$674.56 for maintenance and repairs for rescreening a patio door, replacing lightbulbs, replacing 2 light switches, replacing a transition slip, patch and paint and to reattach a curtain rod and install drapes. The landlord stated that a bent curtain rod, missing drapes, and damaged trim and doors were found that required repairs or replacement. The landlord has submitted in support of this claim a copy of the invoice dated June 2, 2016 for \$674.56 which noted all of the work performed and that 10 hours was charged for labour. The landlord relies upon the

completed condition inspection report for the move-in, the 53 photographs showing the condition of the rental unit at the end of tenancy. The tenant disputed this claim stating that the condition inspection report for the move-in noted “dings” listed. The landlord commented that at the beginning of the tenancy deficiencies were noted in the completed condition inspection report for the move-in and that noted repairs were made consisting of: patch and paint, garage remote, light fixture broken and new shower head and sprayer were resolved soon after.

The landlord also seeks \$625.00 for liquidated damages as the landlord claims that the tenant stayed longer by 15 days and over held the rental property. The landlord stated that the tenant failed to pay any of the lost rental income for the 15 day period or for the loss of the ½ months rent thereafter. Section 5 of the signed tenancy agreement states in part regarding liquidated damages:

If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay the landlord the sum of \$625.00 as liquidated damages and not a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord has provided a completed condition inspection report for the move-in and 53 photographs showing the condition of the rental unit at the end of tenancy to provide a comparison of the unit from the beginning of the tenancy and at the end. The landlord has provided specific detailed amounts of loss for which he seeks compensation in the

form of paid invoices. Although the tenant has disputed the claims made by the landlord, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. I find that the landlord has established a total monetary claim of \$2,809.79 which consists of:

\$1,338.75	Pest Control	Bed Bug Issue
\$440.00	Cleaners	Cleaning
\$222.60	Cleaners	Carpet Cleaning
\$133.88	Lock Smith	Changing Locks
\$674.56	Maintenance	Patch, Paint, repair screen door, replace light switches, drapes and curtain rod

On the landlord's claim for liquidated damages of \$625.00, I find that the landlord has failed. The liquidated damages clause states,

If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy **before the end of any fixed term**, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, **and does vacate before the end of any fixed term**, the tenant will pay the landlord the sum of \$625.00 as liquidated damages and not a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

In interpreting this clause, I note that the fixed term ended on April 30, 2016 and that this clause would cease to be active on that date. Both parties confirmed that the tenant over held the rental unit by 15 days past the April 30, 2016 date. As such, I find that no breach occurred in which the liquidated damages could be claimed. This portion of the landlord's claim is dismissed.

The landlord has established a total monetary claim of \$2,809.79. Having been successful in this application, I order that the landlord is entitled to recovery of the \$100.00 filing fee. I authorize the landlord to retain the \$725.00 security deposit in partial satisfaction of this claim.

Conclusion

The landlord is granted monetary order for \$2,184.79.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: February 3, 2017

Residential Tenancy Branch