



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOLE ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

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

The landlord's agent (the landlord) attended the hearing by conference call and provided undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on August 9, 2016 and again on January 10, 2017. The landlord has submitted in support of this claim a copy of both Canada Post Registered Mail Customer Receipt labels. I accept the undisputed affirmed evidence of the landlord and find that the tenant has been properly served as per sections 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order 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 February 1, 2016 on a fixed term tenancy ending on January 31, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$820.00 payable on the 1st day of each month. A monthly parking fee of \$10.00 was agreed to. A security deposit of \$415.00 was paid on January 24, 2016.

The landlord seeks a monetary claim of \$550.00 which consists of:

\$50.00 Suite Cleaning (2 hours at \$25 per hour)
\$50.00 Clean Drapery (2 at \$25 each)
\$450.00 Liquidated Damages

The landlord stated that the tenant vacated the rental unit on July 31, 2016 and provided his forwarding address in writing on August 1, 2016.

The landlord stated that the tenant left the rental unit dirty requiring general suite cleaning and the washing and hanging of two drapes.

The landlord stated that section 5 of the signed tenancy agreement speaks to liquidated damages and 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 to the landlord the sum of \$450.00 as liquidated damages and not as 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.

The landlord stated that the tenant breached the tenancy agreement by prematurely ending it on July 31, 2016 instead of January 31, 2017.

The landlord has submitted in support of this application:

A copy of the signed tenancy agreement dated January 24, 2016
A copy of a completed condition inspection report for the move-in dated January 30, 2016
A copy of an incomplete condition inspection report for the move-out dated July 31, 2016
A copy of a handwritten note with the tenant's forwarding address dated received on August 1, 2016
A copy of a letter "To Vacating Tenant(s) dated June 26, 2016 which details the landlord's requirements for moving out

A copy of a Notice of Final Opportunity to Schedule a Condition Inspection Report dated for July 31, 2016

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.

I accept the undisputed affirmed evidence of the landlord and find that the tenant vacated the rental unit prematurely on July 31, 2016 leaving it dirty and requiring cleaning. I note however that the landlord has failed to provide any details to support the claims of \$50.00 for suite cleaning and \$40.00 for drapery cleaning. The landlord provided no invoices/receipts for any actual costs incurred. The landlord stated that because of the short turn around period between tenants the landlord was forced to clean the suite and clean the draperies herself. The landlord stated that suite cleaning took 2 hours to complete. I find that although the landlord failed to provide any invoices/receipts or specific details of cleaning that based upon the incomplete condition inspection report for the move-out and find that 2 hours is reasonable in the circumstances. I award the landlord \$100.00 for the combined cleaning of the suite and the draperies.

The liquidated damage clause provided that if the tenant ended the tenancy before the end of the term he will pay to the landlord the sum of \$450.00 as liquidated damages and not as a penalty.

In contract law the term "liquidated damages" refers to a genuine pre-estimate of the loss that will be suffered in the event of a breach of the contract; it is not used to describe some subset of damage that the landlord requires the tenant to pay, in addition to general damages flowing from a breach of the contract.

In this case, the landlord was unable to provide any details of the actual costs incurred in re-renting the unit. The landlord repeatedly invoked the clause stating the tenant owed this amount as agreed upon in the tenancy agreement for breaching the tenancy agreement by prematurely ending it. The landlord repeatedly stated that costs were incurred such as advertising, but clarified that the landlord was constantly advertising for the entire rental property and not just this unit. The landlord was unable to provide any specific details of any actions taken by the landlord or any costs incurred in re-renting this rental unit. As such, I find in this case that the landlord has failed to establish that the \$450.00 claim for liquidated damages is a genuine pre-estimate of costs incurred in re-renting. I find that this term in this tenancy agreement to be a penalty and unenforceable. This portion of the landlord's claim is dismissed.

The landlord has established a monetary claim of \$100.00 for cleaning.

Having been partially successful, I order that the landlord may recover \$50.00 of the filing fee.

In offsetting this claim, I authorize the landlord to retain \$150.00 from the \$415.00 security deposit currently held. I grant a monetary order in favor of the tenant for the remaining balance of \$265.00.

Conclusion

The landlord may retain \$150.00 from the security deposit.

The tenant is granted a monetary order for \$265.00.

This order must be served upon the landlord. Should the landlord fail to comply, 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 03, 2017

Residential Tenancy Branch