



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, MNR, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent, damage to the unit or suite 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 tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

Issue to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy?

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to retain all or a portion of 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 from the tenant?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on October 1, 2015 and was to be for a one year term; however the tenancy ended one month early on August 31, 2016. The tenants were obligated to pay \$1400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit and a \$500.00 pet deposit. The landlord testified that the pet deposit has been returned to the tenant. The landlord testified that he and the tenant conducted written move in and move out condition inspection reports. The landlord testified that the tenant did not maintain the pool as required per the addendum to their tenancy agreement. The landlord testified that the tenant did not leave the suite or the yard in a reasonable manner at move out. The landlord testified that the tenant did not pay his rent in full and on three occasions; his cheques were returned "NSF". The landlord testified that the tenant broke the lease agreement and should be held responsible for the liquidated damages as per the tenancy agreement. The landlord testified that as a result of the tenants' actions, the landlord incurred significant costs and therefore has suffered a loss that the tenant should pay for.

The landlord is applying for the following:

1.	Pool Maintenance services and supplies	570.96
2.	Suite and yard cleaning	884.73
3.	Carpet cleaning	283.25
4.	Unpaid rent and NSF fees	790.00
5.	Removal of sand bags	100.00
6.	Liquidated damages	450.00
7.	Filing fee	100.00
8.	Minus security deposit	-700.00
	Total	\$2478.94

The tenant gave the following testimony. The tenant stated that the pool was never in a functioning state. The tenant testified that "I cleaned on the go" to meet the move out deadline. The tenant testified that the landlord didn't mention a deadline to pay the rent, the NSF charges or the liquidated damages.

Analysis

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 arguments are reproduced

here. The principal aspects of the landlord's claim and my findings around each are set out below.

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 address the landlords' claims and my findings as follows:

Pool costs

The landlord testified that the costs sought, were costs related to get the pool up and running at the outset of the tenancy. The landlord testified that the tenant required a lot of training to learn how to maintain the pool. The tenant disputes this claim. The tenant testified that the pool was never functional during his tenancy and that he feels that he shouldn't be responsible for costs to get the pool to a reasonable working condition. I agree with the tenant in this regard. The landlord did not dispute that the pool didn't work at any time during the tenancy. It is unreasonable to offload those costs onto the tenant for an item he was never able to use. Based on the above, the landlord has not provided sufficient evidence to satisfy me for this claim and I therefore dismiss this portion of his application.

Suite and yard cleaning

The landlord testified that the tenant did not leave the suite and yard in a reasonably clean condition at move out. The landlord testified that the suite needed to be cleaned, the yard cleaned and maintained and debris removed and taken to the dump. The landlord provided the condition inspection report and bill for \$884.73 to support his claim. The tenant testified that move out was "a little heated" and that he did his best to "clean as we go". Based on the landlords documentary evidence and the tenants own testimony conceding that he didn't clean the unit or yard as good as he would have liked, I find on a balance of probabilities, that the landlord is entitled to the \$884.73 as claimed.

Carpet Cleaning

The landlord is seeking \$283.25 for carpet cleaning. The landlord has submitted the condition inspection report and a bill to support their claim. The tenant testified that he had a dog and that he didn't clean the carpets. Residential Tenancy Policy Guideline 1 addresses the issue before me as follows:

The tenant may be expected to steam clean or shampoo the carpets at the end of a tenancy, regardless of the length of tenancy, if he or she, or another occupant, has had pets which were not caged or if he or she smoked in the premises.

Based on the above, I find that the landlord is entitled to \$283.25.

Unpaid Rent and NSF Fees

The landlord testified that on three separate occurrences, the tenant's rent cheque was returned from the bank for "Non-Sufficient Funds". The landlord also testified that the tenant withheld half of the last months' rent. The tenant testified that he agrees with the NSF fees. The tenant testified that he also agrees that he withheld the half of the last months' rent. The tenant testified that the landlord didn't give a deadline as to when he had to pay it. Based on the tenants own testimony I find that the landlord is entitled to \$790.00.

Removal of Sand Bags from the Pool

The landlord is seeking \$100.00 for the removal of sandbags from the bottom of the pool. The landlord testified that he believes the tenant put them there. The landlord did not provide a bill or receipt to support this claim. The tenant disputes this claim and testified that the bags were already in the bottom of the pool when the tenancy began. The landlord has not satisfied me that the tenant put the sandbags in the pool or the costs to remove them. Based on the insufficient evidence before me, I hereby dismiss this portion of the landlords claim.

Liquidated Damages

The landlord is seeking \$450.00 for liquidated damages. The landlord testified that the tenant "broke the lease" early and as per their tenancy agreement; the tenant is responsible for liquidated damages. The landlord testified that he did not agree to allow the tenant "break the lease" without paying the liquidated damages. The tenant testified that he did sign the agreement and is aware of the liquidated damages clause and does agree that the tenancy ended early but thought the landlord was agreeable to end the tenancy early. The landlord provided the tenancy agreement which clearly outlines the liquidated damages clause. The tenant signed the document and acknowledged that he did end the tenancy early. Based on the above, I find that the landlord is entitled to the \$450.00.

The landlord is entitled to the recovery of his \$100.00 filing fee.

Conclusion

The landlord has established a claim for \$2507.98. I order that the landlord retain the \$700.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1807.98. This order may be filed in the Small Claims 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: March 14, 2017

Residential Tenancy Branch