



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding OPTIMUM REALTY INC.
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* (the Act) for:

- a monetary order for damage to the rental unit 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 provided affirmed testimony. The landlord's agent (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 September 14, 2016. The tenants confirmed receipt of the package as claimed by the landlord. The tenants stated that the landlord was served with the submitted documentary evidence via Canada Post Registered Mail on February 14, 2017. The landlord confirmed receipt of the tenants' submitted documentary evidence as claimed. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit 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 September 1, 2015 on a fixed term tenancy ending on April 31, 2016 as shown by the submitted copy of the signed tenancy agreement dated August 7, 2015. The monthly rent was \$1,550.00 payable on the 1st day of each month. A security deposit of \$775.00 was paid on August 7, 2015. A condition inspection report for the move-in was completed by both parties on August 25, 2015.

The landlord seeks a monetary claim of \$739.17 which consists of:

\$367.50	Power Washing driveway/carport grease stains
\$270.00	Cleaning/ Shampoo Carpet
\$50.00	Over holding, August 31, 2016
\$51.67	Over holding, September 1, 2016

The landlord claims that the tenant over held the rental unit and vacated it on September 2, 2016 leaving it dirty which required general cleaning/carpet shampooing and power washing of the grease stains in the driveway/carport.

The landlord has submitted in support of the claims:

- A copy of the signed tenancy agreement dated August 7, 2016.
- A copy of the completed condition inspection report for the move-in dated August 25, 2015.
- A copy of the incomplete condition inspection report for the move-out dated September 2, 2016.
- 21 photographs of the rental unit at the end of the tenancy.
- A copy of the power washing invoice dated September 8, 2016.
- A copy of a handwritten receipt for cleaning dated September 8, 2016.
- Copies of 3 emails exchanges between the parties regarding the move-out.

The tenants disputed the claims of the landlord stating that the rental unit was left clean.

Both parties agreed that a move-out condition inspection was scheduled on August 31, 2016 at 12 pm. On that date the landlord stated that the tenants were not ready to proceed. Both parties agreed that the landlord would return at a later time to conduct the move-out report and take possession of the rental unit. The tenants stated that they did not contact the landlord until approximately 10pm via email that the rental unit was cleaned and vacated to return possession of the rental unit. The tenants stated that the landlord contacted the tenants via email at 7:30pm to offer a re-scheduled move-out report and return of possession with 24 hours' notice by the tenants. The tenants replied via email at 10:01pm indicating that the rental was now ready for the landlord's possession and requesting a time. Both parties agreed that a time was agreed upon to meet and complete the condition inspection report for the move-out and provide possession of the rental unit on September 2, 2016.

The tenants have submitted in support of their claims:

32 photographs of the rental unit at the start and the end of the tenancy.

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.

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants. Although the tenants have disputed the claims of the landlord that the rental unit was left dirty requiring power washing of grease stains, general cleaning of the rental premises and carpet shampooing for carpet stains, the landlord has provided sufficient evidence to satisfy me of the claims that the rental premises was left dirty. The landlord has provided a clear view of the condition of the tenancy using a completed condition inspection report for the move-in dated August 25, 2015 where both parties signed in acknowledgement of the condition of the premises. This report noted that there were none of the issues being claimed by the landlord in this application. This is also clearly shown for comparison in the photographs provided by landlord showing the various grease stains in the driveway/carport as well as the general cleaning as provided in the landlord's photographs of the dirty blinds, dirty and debris behind the stove, stains on the walls, carpet stains, dirty toilet, lint left in the lint trap of the dryer. This is further supported by the landlord's submitted invoices for work performed for the power washing and the cleaning. Although the tenants claimed that the condition inspection report was fraudulent, I find that the evidence (photographs) provided by the tenants were not sufficient on a balance of probabilities to show that the report was false. I find that the photographs provided by the tenants did not provide sufficient evidence to make a comparison of the condition regarding the claims made by the landlord. In fact the tenants acknowledged that it was signed by the tenant on August 25, 2015 and the tenant's roommate, D.B. stated that although the report was completed in their absence, the tenant, J.L. signed in agreement to the report regardless. During the hearing, D.B. noted that the condition inspection report was marked by him on August 25, 2015 noting, "ceiling/panelling", but did not reference what if anything was wrong during the move-in. On this basis, I find that the landlord has established the claims for power washing (\$367.50) and cleaning (\$270.00) totalling, \$637.50.

On the landlord's claim for the tenant over holding the rental unit on August 31, 2016, I find that the landlord has failed. Both parties acknowledged that although the move-out inspection and possession was set for August 31, 2016, the payment of rent was until the end of the month. As such, I find that there was no over holding for August 31, 2016. This portion of the landlord's claim is dismissed.

On the landlord's claim for tenant over holding of the rental unit on September 1, 2016 of \$51.67, I find that the landlord has established a claim. Both parties acknowledged that the move-out inspection and possession being returned to the landlord was scheduled for August 31, 2016 at 12pm. Both parties acknowledged that at approximately 12 pm the tenants were still moving items. Both parties acknowledged that the landlord would return later upon being notified of the tenants' completion of moving out. The tenants acknowledged that due to moving and stress the landlord was not contacted until 10:01pm via email in response to the landlord's email request from 7:30pm to schedule a new move-out time. Both parties agreed to the date of September 2, 2016.

The landlord has established a total monetary claim of \$689.17.

The landlord is entitled to recovery of the \$100.00 filing fee. In offsetting this claim, I authorize the landlord to retain the \$775.00 security deposit currently held. This grants the landlord a monetary order for the difference of \$14.17.

Conclusion

The landlord is granted a monetary order for \$14.17.

This order must be served upon the tenants. Should the tenants 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: March 08, 2017

Residential Tenancy Branch