



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail on October 5, 2016 to the forwarding address the tenant had provided to the landlord. The landlord a copy of the document whereby the tenant provided the landlord with his forwarding address in September 2016; a copy of the registered mail receipt, including tracking number, and a printout from the Canada Post website showing the registered mail was successfully delivered on October 17, 2016. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

The landlord sent the tenant documentary evidence on March 7, 2017 via registered mail using the same forwarding address. The landlord orally provided a registered mail tracking number as proof of service. A search of the tracking number showed that the registered mail has not been picked up by the tenant. Section 90 of the Act deems a person to be in receipt of documents five days after mailing, even if the person refuses to accept or pick up their mail. Accordingly, I deemed the tenant sufficiently served with the landlord's documentary evidence.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for the amounts claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The one year fixed term tenancy started on May 1, 2016 and as set to expire April 30, 2017. The tenant paid a security deposit of \$475.00 and was required to pay rent of \$950.00 on the first day of every month. The tenant gave the landlord late notice to end the tenancy on September 13, 2016 with an effective date of September 30, 2016. The landlord responded to the tenant advising the tenant in writing of the consequences of breaking the fixed term tenancy. The tenant acknowledged receipt of this written communication and the end of the tenancy, along with the move-out inspection, was set for September 30, 2016. On September 28, 2016 the landlord found the unit had been vacated and the keys were left behind on the kitchen countertop. Telephone messages were left for the tenant by the resident manager asking him to return to do the move-out inspection but the messages were unanswered.

The landlord seeks to recover the following amounts from the tenant:

Carpet cleaning and drape cleaning – \$65.00 and \$60.00

The tenant agreed to pay for these items in writing when the move-out inspection was scheduled. The landlord had these items cleaned and provided invoices as evidence in support of the claims.

Window cleaning and suite cleaning -- \$21.00 and \$95.00

Additional cleaning of the windows and other areas of the rental unit was required, as evidence by the move-out inspection report and the invoices provided as evidence.

Liquidated damages -- \$400.00

The landlord was able to re-rent the unit for October 1, 2016 but the tenancy agreement provides for a liquidated damages clause in the event the tenant ends the tenancy early. Charging the tenant liquidated damages was also communicated to the tenant in the landlord's written response to the tenant's notice to end tenancy.

Reversal of Move-In Bonus -- \$50.00

The tenant was provided a move-in bonus of \$50.00 for entering into a one-year lease. The tenancy agreement provides that if the tenant ends the tenancy early the move-in bonus will be reversed. This was also communicated to the tenant in the landlord's written response to the tenant's notice to end tenancy.

Missing laundry card -- \$5.00

The laundry card provided to the tenant was not returned. The landlord seeks to recover the cost of a replacement card.

Analysis

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean, undamaged, and return to the landlord all keys or means of access. If a tenant does not leave the rental unit reasonable clean, undamaged, or return all means of access, the landlord may recover the associated losses from the tenant. Based upon the unopposed evidence presented to me, I am satisfied that additional cleaning was required in the rental unit and I find the landlord substantiated the amounts claimed by evidence. I am also satisfied that the tenant failed to return the laundry card. Therefore, I grant the landlord's request for recovery of losses associated to carpet cleaning, drapery cleaning, general cleaning, window cleaning and replacement of the laundry card in the amounts claimed.

The landlord also seeks liquidated damages of \$400.00 from the tenant. The tenancy agreement provides for a liquidated damages clause providing for such a charge. A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. Upon review of the liquidated damages clause of the tenancy agreement, I find the amount payable under the clause to be a reasonable pre-estimate and is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$400.00 from the tenant.

Upon review of the tenancy agreement I am also satisfied that the parties had agreed in advance that if the tenant breached the fixed term he would repay the bonus he received for entering into a one year lease. I uphold this agreement and award the landlord recovery of the move-in bonus as requested.

Since the landlord was successful in this application I further award the landlord recovery of the \$100.00 filing fee paid for this applicant.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

In light of all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Carpet cleaning	\$ 65.00
Drape cleaning	60.00
Suite cleaning	95.00
Window cleaning	21.00
Liquidated damages	400.00
Move-In Bonus reversal	50.00
Missing laundry card	5.00
Filing fee	<u>100.00</u>
	\$796.00
Less: security deposit	<u>-475.00</u>
Monetary order	\$321.00

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$321.00 to serve and enforce upon the tenant.

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: April 07, 2017

Residential Tenancy Branch