



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB MNDC MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession for Breach of a Material Term of the Tenancy pursuant to section 55; a monetary order for unpaid rent pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72. The landlord withdrew the application for an Order of Possession as the tenants had vacated the rental unit prior to this hearing date.

The landlord's representative attended this hearing. The tenants attended the hearing briefly but hung up before the start of the hearing. The tenants' representative attended the hearing and spoke on behalf of both tenants. All parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenants' representative confirmed receipt of the landlord's Application for Dispute Resolution as well as the additional evidence package submitted by the landlord.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the rental unit?
Is the landlord entitled to retain all or a portion of the tenants' security deposit?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on June 30, 2017 as a fixed term tenancy. The tenancy was scheduled to end on June 30, 2017. The tenants' representative testified that the tenants vacated the rental unit on the evening of June 30, 2017 while the landlord claims that the tenants remained in the rental unit for 5 additional days after the end of

the fixed term tenancy. The landlord continues to hold the \$299.00 security deposit paid by the tenants at the outset of the tenancy.

The landlord sought to retain the tenants' \$299.00 security deposit towards a monetary order. The total amount claimed on the landlords' monetary worksheet is \$819.60 however I have reviewed their amounts claimed and find that their claim totals \$680.60. as follows,

Item	Amount
5 Days Over-holding (after end of tenancy)	\$146.15
Rental Unit cleaning and carpet cleaning	365.00
Blind Replacement	104.00
Key Replacement	15.00
Administrative Fee	25.00
"GST Fee"	25.45
Less Security Deposit	-299.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$481.60

The landlord's representative, who works in a different province and does not attend the residential premises, testified that the tenant did not vacate the rental unit until July 5, 2017. She relied on the information that she had been provided by other landlord's employees in the organization. The landlord also relied on the fact that the condition inspection was conducted on July 6, 2017. Finally, she relied on email correspondence between the two parties submitted as evidence for this hearing. The email correspondence regarding the end of tenancy read (in part) as follows,

July 4, 2017 Landlord to Tenants' Representative:

...please print and sign a copy of the attached lease for which you are a cosigner for [tenants]... no later than Friday, July 7th, 2017 at 12 noon.

July 5, 2017 Tenants' Representative to Landlord:

...I'm sorry to inform you we will not be renewing the lease because the rent increase was higher than what we were told ... They moved out June 30th. Keys are in apartment.

The landlord provided undisputed testimony that the rental unit, including the carpets had not been cleaned at the end of the tenancy. The landlord pointed to clause no.23 in

the residential tenancy agreement which states, “*if the carpets were professionally cleaned at the start of the tenancy, the tenant will pay for professional cleaning at the end of the tenancy*”. Furthermore, the tenants’ representative acknowledged that the tenants did not clean the carpet.

The tenants’ representative acknowledged that the blinds were damaged by the tenants over the course of the tenancy however he stated that the landlords were in possession of keys to the rental unit at the end of the tenancy. He testified that the tenants left the keys on the counter of the unlocked rental unit when they moved out on June 30, 2017. The landlord testified that, when he attended for the condition inspection of the unit at the end of the tenancy, the landlord’s representative had the tenants’ keys in her hand.

The tenants’ representative testified that the landlords’ administrative fee and “GST fee” are excessive and unnecessary. He testified that he is willing to take responsibility for the damage caused by the tenants but that these fees are simply penalties and “cash grabs”.

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 (in this case, the landlord) bears the burden of proof.

The landlord must prove the existence of the damage/loss. I find that the landlord has proven damage and loss as a result of this tenancy by virtue of the provision of the condition inspection report that accurately reflects her testimony and indicates that one tenant and the tenants’ representative attended the move-out condition inspection.

The landlord must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Again, the condition inspection report is clear and, according to Residential Tenancy Regulation No. 21 as laid out below, the condition inspection report is the best evidence of the condition of the unit unless otherwise proven.

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the

rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The tenants' representative argued that the tenants "did their best to clean" in a short period of time however the condition inspection report provides evidence that the majority of the rental unit was dirty at the end of the tenancy and, therefore required cleaning, I do not accept the tenants' representatives' argument that the carpets were too aged and worn to be cleaned and that they require replacement. Furthermore, the residential tenancy agreement includes a requirement that the tenant professionally clean the carpets at the end of the tenancy. The undisputed evidence of the landlord is that the carpets were professionally cleaned at the start of the tenancy.

The tenants' representative acknowledged that the blinds in the rental unit were damaged during the course of the tenancy. The condition inspection report at move-in indicates the blinds were in need of cleaning at the beginning of the tenancy but, at the end of the tenancy 2 sets of blinds are described as damaged.

The tenants' representative also disputed that the tenants failed to return their keys for the rental unit however the move-out condition inspection report signed by the tenant at the end of the tenancy indicates that 5 keys were given at the outset of the tenancy and 2 keys were returned. The tenants' representative acknowledged that he was present during the move-out condition inspection.

The landlord must also provide evidence that can verify the actual monetary amount of the loss/damage. I find that the landlord has provided evidence with respect to monetary amount of each items he seeks: the residential tenancy agreement to show the requirement that the carpets are to be cleaned and the unit vacated by June 30, 2017; the Act and Regulations to show that the rental unit is to be cleaned and the keys to be returned by the tenants; and the condition inspection report to document damage to the blinds at the end of the tenancy as well as the fact that the tenants did not agree to a condition inspection until July 6, 2017.

Given the date of the email notice to the landlord from the tenants' representative that the tenants had vacated the residence dated July 5, 2017, given the date that the condition inspection took place and given my confidence in the credibility of the landlord in her testimony and records as illustrated by the records submitted for this hearing as well as by the calm and candid manner in which she testified, I find that the tenants are required to pay the cost of remaining in the unit after the scheduled end of the tenancy (over holding) for 5 days. I find that the tenants either did not vacate or did not notify the

landlord that they had vacated the rental unit and therefore, the landlord has suffered rental loss as a result of their failure to act. The landlord is entitled to \$146.15 for the period of over holding.

I find that the landlord proved, with invoices, work orders and the condition inspection report as well as her own and the leasing agent's testimony that the unit required additional cleaning (including carpet cleaning) at the end of the tenancy. I accept the landlords' evidence that the unit required cleaning, including carpet cleaning and find that the landlord is entitled to \$365.00 for general cleaning and carpet cleaning.

I find that the landlord proved, with invoices, work orders and the condition inspection report as well as her own and the leasing agent's testimony that the 5 keys given to the tenants at the outset of the tenancy were not all returned at the end of the tenancy.

Three (3) keys remained unreturned as of the date of the condition inspection report. I accept that document as the best evidence regarding the failure to return all of the keys and therefore, I find that the landlord is entitled to \$15.00 to change the lock and replace the keys to the unit.

I find that the landlord proved, with work orders and the condition inspection report as well as the undisputed testimony of the leasing agent that the tenants damaged the blinds in the rental unit. As this was undisputed, I find that the landlord is entitled to recover \$104.00 for replacement blinds.

Section 5, 6, and 7 of the *Residential Tenancy Act Regulations* address various fees that might be imposed by a landlord including; prohibited fees; refundable fees; and non-refundable fees. Term 45 of this residential tenancy agreement is titled "other". Within the blank space at term 45, includes fees for items such as garage door opener replacements, laundry card replacement, lock and key replacement as well as a \$25.00 fee described as an "admin fee on security deposit (if charges occur)". The landlord argues that the \$25.00 admin fee is standard when the landlord is requesting retention of part of a security deposit as the costs the landlord incurs in paperwork. The landlord also testified that the "GST fee" reflects landlord employee fees in making repairs or cleaning a rental unit at the end of tenancy.

While these fees are not excluded under the Act or Regulations, I find that they unnecessary: the landlord's compensation for services rendered by their employees is provided by the recovery of the cost of those services and the landlord's cost in retaining a portion of a tenants' security deposit to their own end does not require an additional fees attached. Therefore, I find that the landlord is not entitled to claim these fees. I dismiss the portion of the landlords' application to recover these fees.

In accordance with section 72, I find that the landlord is entitled to retain the tenants' \$299.00 security deposit towards the monetary amount below. As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee for this application.

Item	Amount
5 Days Over-holding (after end of tenancy)	\$146.15
Rental Unit cleaning and carpet cleaning	365.00
Blind Replacement	104.00
Key Replacement	15.00
Less Security Deposit	-299.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$431.15

The landlord is entitled to a monetary order in the amount of \$431.15.

Conclusion

I allow the landlord to retain the tenant's \$299.00 security deposit.

I issue a monetary order to the landlord in the amount of \$431.15 to the landlord.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this 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: September 15, 2017

Residential Tenancy Branch