



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for compensation for damage, cleaning and unpaid or loss of rent; and, authorization to retain the security deposit. The hearing commenced on October 25, 2017 and on that date both parties appeared or were represented. The hearing was adjourned due to time constraints and an Interim Decision was issued. The Interim Decision should be read in conjunction with this decision.

As seen in the Interim Decision, I had encouraged the parties to try to settle their disputes during the period of adjournment. At the reconvened hearing of January 16, 2017 only the landlord's agent appeared. The landlord's agent stated she had made an offer to the tenants with a view to settling the matter for \$1,000.00 in compensation for the landlord. The tenant indicated to the landlord's agent that she would provide a response the following day but the landlord's agent did not receive a response. The landlord's agent tried to contact the tenant a week later and received no answer. Since the tenants did not provide written agreement for the settlement and did not appear at the reconvened hearing I did not consider this matter resolved by way of settlement.

The landlord's agent stated the landlord is agreeable to amending the landlord's original claim to the lesser amount of \$1,000.00 that was proposed to the tenants as a settlement. I amended the landlord's claim accordingly. Since the claim is reduced to \$1,000.00 I proceed to determine whether the landlord has established an entitlement to recover at least \$1,000.00 from the tenants.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation of at least \$1,000.00 from the tenants?
2. Is the landlord authorized to retain the tenants' security deposit?

Background and Evidence

The tenancy started on March 1, 2014 on a month to month basis. The tenants paid a security deposit of \$700.00 and a move-in inspection report was prepared on February 27, 2014. The monthly rent was originally set at \$1,400.00 payable on the first day of the month but over the years the monthly rent was increased to \$1,530.00.

The rental unit was described as being the upper floor and a portion of the lower floor of a house with shared access to a laundry room and carport. There is also a separate basement suite that was also tenanted. The lower portion of the rental unit includes the entry way, a rec room, and a bedroom.

On March 8, 2017 the landlord received notice from the tenants of their intention to end the tenancy effective April 1, 2017. The landlord responded by putting the tenants on notice that the tenants may be held responsible for April 2017 rent. The tenants did not respond to the landlord's notice. A move-out inspection was scheduled for 11:30 a.m. on March 31, 2017.

According to the landlord, two agents attended the property at 11:30 a.m. on March 31, 2017 for purposes of conducting the move-out inspection but the tenants were not present. The agents found the rental unit had been vacated but it was unclean and garbage and abandoned property was left behind. The landlord's agent performed the move-out inspection and took photographs of the property during the inspection. The keys for the rental unit were not left or returned so the landlord's agents proceeded to change the locks. An agent for the tenant returned the keys to the rental unit approximately a week later.

According to the tenant, her agent was at the rental unit from 9:30 a.m. until 11:40 a.m. on March 31, 2017 and the landlord did not attend the property. The tenant pointed to a text message she received from her agent in support of this assertion. The tenant stated her agent could only send text messages as her phone did not work for phone calls; however, the tenant subsequently testified that her agent had telephoned the landlord's office and nobody answered. The tenant also acknowledged that she did not

attempt to contact the landlord about the move-out inspection, claiming she did not know the landlord's phone number.

The tenant was of the position the landlord took the photographs prior to March 31, 2017, during a pre-move out inspection, and the landlord's photographs do not reflect the condition of the property as of March 31, 2017.

Landlord's monetary claim

The landlord had originally claimed for compensation of \$2,693.95 against the tenants; however, the landlord has limited its claim to \$1,000.00 by way of amendment request made at the reconvened hearing. Below, I provide the details of the landlord's claims in the amounts originally sought since the tenant had provided responses to those original claims; however, in my analysis I will determine whether \$1,000.00 has been proven.

1. Unpaid rent for April 2017 -- \$1,530.00

The landlord submitted that the rental unit was not re-rented until July 1, 2017 and the tenants were put on notice that they could be charged for April 2017 rent in giving short notice on March 8, 2017. The landlord stated that advertisements were placed as soon as the tenant's notice was received but the landlord acknowledged that repairs had to be made to the property after the tenancy ended due to a flood.

The tenant pointed out that the landlord's letter indicates they "can" be charged for rent for April 2017. The tenant submitted that in speaking with the landlord's staff over the telephone they were advised that it was unlikely that they would be charged for April 2017 rent given the events that led up to the end of this tenancy, including a fridge that was not repaired by the landlord and a flood in the basement.

I heard from the tenant that there had been a flood in the area in mid-March 2017 due to rapid snow melt and rain that overwhelmed the drains on the property that had not been maintained properly. As a result, water entered the lower portion of the rental unit and the basement required drying and remediation work. The tenant stated that the restoration crew who inspected the property advised them that they could not live in the space while it was undergoing remediation.

The tenant was of the position the landlord did not start advertising the rental unit until June or July 2017 because of the repairs and remediation work required at the property.

The tenant was also of the position the landlord had difficulty attracting replacement tenants because the landlord has a terrible reputation.

In recognition that the tenants gave notice to end tenancy on March 8, 2017 which is less than one month of notice to end tenancy, the tenant was agreeable to compensating the landlord the equivalent of one week of rent for the period of April 1 – 7, 2017.

2. Cleaning -- \$420.00

The landlord submitted that the rental unit required a considerable amount of cleaning after the tenancy ended. A professional cleaner spent 14 hours cleaning between the dates of April 8 and 11, 2017 but the landlord is only seeking compensation for 12 hours.

The tenant stated she had cleaned approximately 60% of the rental unit before she vacated and that her agent was cleaning on March 31, 2017 to bring the rental unit up to about 90% clean. The tenant also pointed out that the rental unit needed cleaning at the start of the tenancy, as seen in the move-in inspection report, and the tenant did that without seeking compensation from the landlord.

The landlord pointed to photographs taken by the property manager at the move-out inspection in support of the claim for cleaning.

3. Carpet cleaning -- \$313.95

The landlord had the carpets professionally cleaned after the tenancy ended because they were dirty and stained and the tenants had not presented a carpet cleaning receipt as evidence that they had them cleaned.

The tenant stated they had the carpets cleaned and the tenant presented a receipt for carpet cleaning in her evidence package. I noted that the tenant's receipt indicates that only two bedrooms were cleaned and the carpeted areas included a living room, dining room, hallway, stairs and three bedrooms.

The tenant questioned the amount claimed by the landlord since the carpet cleaning company used by the landlord told her they only charged the landlord \$303.00.

The landlord maintained that they paid the carpet cleaning company the amount appearing on the receipts.

4. Garbage removal -- \$330.00

The landlord submitted that their maintenance man spent six hours hauling the tenants' garbage and abandoned possessions to the dump. The garbage included garbage bags that were in the closet in the basement, boxes, items in the back yard, patio furniture and a barbeque. The maintenance man charges \$55.00 per hour.

The tenant acknowledged that some abandoned property was left behind, including patio furniture and a barbeque but claimed that the other garbage had been removed by her brother-in-law.

The landlord maintained that the photographs of the garbage left behind were taken at the move-out inspection.

5. Keys -- \$100.00

The landlord changed the locks on March 31, 2017 because the rental unit had been vacated and the keys had not been returned by the tenants.

The tenant stated that if the landlord's agent had shown up for the move-out inspection the keys would have been returned at that time by the tenant's agent.

The landlord's agent maintained that the property manager had attended the rental unit at the time scheduled on March 31, 2017 to do the move-out inspection and retrieve the keys.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The burden of proof is based on the balance of probabilities. It is important to note that at the end of the first hearing date the tenant had provided her responses to the landlord's claims; however, the landlord had not had the opportunity to rebut or cross examine the tenant during that hearing time. Since the tenants did not appear at the reconvened hearing the landlord was deprived of the opportunity to cross examine the tenants; however, the landlord was given the opportunity to rebut the tenant's testimony during the reconvened hearing. Further, the landlord's agent was available for me to examine further. The landlord also stated that the property manager was available to be called as a witness. Accordingly, I have given more weight to the landlord's testimony than that of the tenant.

Unpaid rent

The tenant was agreeable to compensating the landlord the equivalent of one week of rent as she stated during the hearing and as seen in the tenant's notice to end tenancy of March 8, 2017. In the tenant's notice to end tenancy, the tenants had calculated the amount the tenants were agreeable to as being \$357.00 and authorized the landlord to deduct this from the security deposit. The tenant also indicated the landlord should mail the rent of the security deposit to the tenant and the tenant provided a forwarding address.

In light of the above, I find the landlord has been duly authorized to deduct \$357.00 from the security deposit by the tenant and I honour the authorization already provided. However, the landlord seeks compensation for other amounts for cleaning, garbage removal and lock change, which I analyze below.

Cleaning, garbage removal and lock change

Pursuant to section 37 of the Act a tenant is required to leave a rental unit reasonably clean, vacant and return the keys to the landlord at the end of the tenancy.

It is undisputed that the keys were not returned to the landlord at the move-out inspection, although the tenant argued this is because the landlord did not appear for the move-out inspection. I have rejected the tenant's position as the only evidence the tenant provided was a text message sent to the tenant by her agent several hours later. The tenant's agent was not called as a witness at the hearing and not available for further examination. I also noted that the tenant had provided inconsistent testimony as to her agent's ability to make a phone call and placing a phone call to the landlord's office. I further find that even if the move-out inspection did not take place when scheduled the keys could have been returned to the landlord's office that same day but they were not returned for another week. I note that there is an office location listed on all of the correspondence for the landlord. Since the keys were not returned on March 31, 2017, I find the landlord is entitled to recover lock changing costs from the tenants.

The landlord presented a carpet cleaning invoice to show the landlord had the carpeting cleaned after the tenancy ended. The landlord's invoice indicates a charge of \$313.45 and lists several rooms, hallways and stairs that were cleaned. The tenant also produced a carpet cleaning receipt dated March 18, 2017; however, this receipt indicates only two rooms were cleaned and the tenants were still occupying the rental unit on that date. In the tenant's written submissions, the tenants indicate the other carpets were cleaned prior to March 18, 2017 but they do not indicate when that was done and they did not produce a receipt. Accordingly, I find the landlord has satisfied me that the landlord's carpet cleaning costs are recoverable from the tenants. The receipt produced by the landlord indicates the landlord was charged \$289.00 plus GST for a total charge of \$313.45.

The landlord's photographs show a rental unit that requires additional cleaning in a number of areas, including: the fridge, stove, walls, trim, floor and shower. The tenant acknowledged she only cleaned about 60% of the rental unit. The tenant asserted her agent cleaned further on March 31, 2017 to bring the rental unit up to about 90% clean; however, I find that position is unsupported by other evidence and I find it unlikely that a couple of hours on March 31, 2017 would have been sufficient for a rental unit as large as this one. The landlord's photographs also depict garbage bags and boxes in the entry way and the barbeque and patio furniture on the patio. Accordingly, I find the landlord entitled to compensation from the tenants for additional cleaning and garbage

removal. The landlord claimed \$420.00 for 12 hours of cleaning (which is \$35.00 per hour) and \$330.00 for 6 hours of garbage removal (which is \$55.00 per hour). These tasks were performed by employees of the landlord. I find the hourly rates charged for these tasks to be high; however, considering the landlord limited its claim to \$1,000.00 in total I am satisfied the landlord is absorbing some of the cost of these tasks in reducing its claim against the tenants.

Filing fee, security deposit and Monetary Order

For the reasons provided above, I find the landlord has satisfied me that the landlord suffered losses of at least \$1,000.00 due to the tenant's short notice; failure to return keys at the end of the tenancy; failure to leave the rental unit reasonably clean and failure to remove all of their garbage and abandoned property. Accordingly, I award the landlord compensation of \$1,000.00 as requested.

The landlord's claim had merit and I further award the landlord recovery of the \$100.00 filing fee.

I authorize the landlord to retain the tenants' \$700.00 security deposit in partial satisfaction of the awards provided above and I provide the landlord with a Monetary Order for the balance of \$400.00 [calculated as \$1,000.00 + \$100.00 filing fee - \$700.00 security deposit] to serve and enforce upon the tenants.

Conclusion

The landlord has been awarded compensation of \$1,000.00 plus recovery of the \$100.00 filing fee. The landlord is authorized to retain the tenants' \$700.00 security deposit in partial satisfaction of these awards and the landlord is provided a Monetary Order for the balance of \$400.00 to serve and enforce upon the tenants.

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: January 22, 2018

Residential Tenancy Branch