



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 MNR 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 unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement 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; and authorization to recover the filing fee for this 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, and to make submissions. The tenant acknowledged receipt of the landlord's Application for Dispute Resolution including documentary materials and photographic evidence.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit (and cleaning at the end of the tenancy) as well as unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

This tenancy began on March 1, 2014 as a month to month tenancy with a rental amount of \$850.00 payable on the 1st of each month. A copy of the tenancy agreement was submitted as evidence for this hearing. The landlord continues to hold a \$425.00 security deposit and a \$425.00 pet damage deposit paid by the tenant at the outset of the tenancy (February 3, 2014 and March 1, 2014 respectively). The landlord applied to

retain the tenant's security deposit and a portion of the tenant's pet damage deposit towards a monetary order totalling \$820.50 as well as to recover the filing fee from the tenant.

The landlord testified that black mould and asbestos were discovered in the tenant's rental unit as a result of a bi-annual inspection of the rental unit. After some further investigation and discussion with the tenant, a verbal agreement was made between the tenant and the landlord. The landlord submitted that the agreement was that the tenant remain in the unit until August 8, 2017 however the tenant submitted that she was given 15 days from July 18, 2017 to vacate (by August 2, 2017). The tenant testified that she moved out of the unit before that date.

The tenant testified that she agreed to vacate the unit because she was concerned for the health of herself and her children. She testified that there was no agreement between herself and the landlord with respect to any payment for her final days in the rental unit (in August 2017). She testified that she didn't think the landlord would charge her for any rent in August since she was being asked to move out on such short notice and the unit was not safe to live in. The landlord sought to recover \$146.00 based on her calculation of 5 days of rent in the month of August 2017. The landlord testified that because of the circumstances at the end of the tenancy, the landlord was not asking for the 3 additional days the tenant continued to reside in the rental unit.

The landlord testified that the tenant did not clean the carpets at the end of the tenancy through a professional carpet cleaning but cleaned them herself. The landlord testified that only the stairs in the rental unit were carpet but that the carpet cleaner has a minimum fee that he charges for each visit/cleaning. The landlord supplied an invoice in the amount of \$94.50 for carpet cleaning.

The landlord testified that there was a significant amount of cleaning to be done in the rental unit. The landlord submitted photographic evidence that showed a dirty stove top, the interior of an oven that was very dirty, kitchen cupboards not wiped down and with dead bugs and other grime, a very dirty floor, a missing baseboard and stickers on two separate walls. The landlord submitted a bill from the landlord's company for cleaning in the amount of \$560.00. The landlord testified that the cleaner worked 16 hours at \$35.00 per hour. The landlord also submitted, as part of the cleaner's costs, a \$20.00 bill for cleaning supplies including but not limited to; paper towel, *windex*, all-purpose cleaner and oven cleaner.

The landlord submitted an invoice for each item she is claiming. All of the invoices except the carpet cleaners' invoice are issued from the corporate landlord for their own

work in cleaning, cleaning supplies. As well, the landlord provided a copy of the condition inspection report created at the end of the tenancy. The tenant did not sign the condition inspection report at move-out because she disagreed with the landlord's assessment of the rental unit. She argued that the landlord is charging her excessively in the circumstances: lack of sufficient notice to vacate and the mold within the rental unit.

The tenant testified that she had done her best to clean and pack but that her time was limited and she was uncomfortable remaining in the rental unit with her children. She testified that she was given 15 days to vacate the unit and nothing was provided in writing. The tenant testified that she moved out in less than the time she was given and should not be required to pay for over-holding daily rental amounts as she was asked to leave with insufficient notice. She testified that she should not be required to pay cleaning costs when the landlord had restoration work to do in the unit before any cleaning was done therefore increasing the cleaning costs.

The landlord confirmed that cleaning of the rental unit was done after the repairs and restoration were completed.

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 by virtue of the provision of the condition inspection report. 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 proven otherwise***,

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.

I find that the condition inspection report is an accurate assessment of the rental unit at move-out. However, in these particular circumstances, I find that the tenant should not

be held responsible for the condition of the unit at the end of the tenancy and subsequent cleaning.

The tenant provided some dispute as to the accuracy of the condition inspection report at move-out however she also provided largely undisputed evidence that;

- The landlord had to restore the rental unit and remove some walls in the rental unit after the end of the tenancy to address mold in the rental unit;
- The tenant used a carpet cleaning machine to clean the carpeted stairs at the end of the tenancy;
- The carpet cleaning cost is excessive because of the minimum charge and fact that only the stairs in the rental unit carpeted;
- The landlord gave her 15 days' notice (or less) to vacate the rental unit;
- The tenant vacated the rental unit so that the landlord could address mold within the rental unit.

While I find that the landlord proved, with invoices and condition inspection report as well as clarifying testimony that the rental unit was dirty at move-out, I also accept the testimony and submissions of the tenant that she was hurried out by the landlord and that some cleaning (washing walls, for example) was unnecessary as restoration would begin once she vacated the rental unit.

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 and the landlord must provide evidence to verify the actual monetary amount of the loss/damage. I find that the landlord has provided evidence with respect to monetary amount of each item he seeks with the provision of the invoices from the landlord company. While I find that the monetary expense to the landlord is accurately assessed by the landlord, I find that the loss to the landlord was not as a result of a violation of the *Act* or the tenancy agreement by the tenant.

In this particular case, these costs to the landlord are largely a consequence of finding mold in the unit. The landlord submitted that perhaps the tenant was responsible for the mold given her tenure in the rental unit however the landlord provided no evidence to support this claim. I find that it is the actions of the landlord in rushing the tenant out of the rental unit that resulted in dirty cupboards and stickers left on walls. I find that it is the result of the insufficient notice by the landlord that the tenant must vacate the rental unit that over-holding costs may have been incurred. However, I find that the landlord would not have suffered loss of rent to the unit as, again it was their intention to do repair and restoration work on the rental unit.

I find that the landlord would have had to hire cleaners at the end of the restoration and therefore the cleaning of the rental unit, for all the reasons provided above, is not the responsibility of the tenant. I find that the landlord is not entitled to recover the cleaning cost from the tenant.

I find the tenant is not responsible for the cost of carpet cleaning in these circumstances. I accept the evidence of the tenant that she used a self-cleaner to clean the floors and her submission that the floors would likely need cleaning after the repair and restoration took place. Therefore, I find that the landlord is not entitled to carpet cleaning costs.

With respect what the landlord describes as “unpaid rent” (or over-holding amount in August 2017), I remind the landlord that, when a landlord fails to put conditions or terms of a tenancy or end of tenancy in writing, the landlord may be held to bear the cost of his or her mistake. In this case, without further evidence to show that the tenant had agreed to pay rent in August 2017 after she was given short and insufficient notice according to the Act to vacate the rental unit, I find that the tenant is not responsible to pay the \$146.00 sought by the landlord.

I find that the landlord is not entitled to the unpaid rent and/or over-holding fee; that the landlord is not entitled to the cleaning charges or cleaning supplies; that the landlord is not entitled to the carpet cleaning amount. I find that the landlord is not entitled to a monetary amount from the tenant and therefore I find that the landlord is not entitled to retain all or a portion of the tenant’s security deposit. As the landlord was unsuccessful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee for this application.

As indicated above, the landlord is required to refund the tenant’s \$425.00 security deposit and the tenant’s \$425.00 pet damage deposit to the tenant with any interest payable. There is no interest payable for this tenancy.

Conclusion

I dismiss the landlord's application in its entirety.

I issue a monetary order of \$850.00 to the tenant for the return of her security deposits.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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: February 23, 2018

Residential Tenancy Branch