



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNRL-S, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for a Monetary Order for compensation, a Monetary Order for unpaid rent and the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) and the two Tenants were present for the duration of the teleconference hearing. All parties were affirmed to be truthful in their testimony. The Tenants confirmed service of the Notice of Dispute Resolution Proceeding package and copies of the Landlord’s evidence by registered mail. The Tenants did not submit any evidence prior to the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for compensation?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to withhold the security deposit towards the amount owed?

Is the Landlord entitled to the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord and Tenants were in agreement that the tenancy began on October 1, 2017. After the Tenants were served a notice to end the tenancy on April 18, 2018, they provided notice to the Landlord that they had vacated the rental unit on April 30, 2018. A security deposit in the amount of \$875.00 was paid at the outset of the tenancy and the Landlord is still in possession of the full security deposit amount.

The parties were not in agreement regarding the amount of the monthly rent. The Landlord testified that the Tenants were to pay \$1,750.00 per month for rent, with a \$50.00 credit applied on their account towards utility costs if there were tenants living in the lower level rental unit. The Tenants testified that they were to pay \$1,700.00 monthly rent due to the rent being reduced by \$50.00 to compensate for the utilities cost of the downstairs tenants.

The Landlord confirmed that tenants were residing in the lower level rental unit for the duration of the time the two Tenants resided upstairs. The Tenants testified that every month when they paid rent, there was confusion with the Landlord's office as to the amount due.

The tenancy agreement was submitted in evidence and states rent as \$1,750.00 per month due on the first day of each month. There is a statement below this on the tenancy agreement which notes the following, 'when basement suite is occupied your account will be credited \$50.00 towards utilities costs'.

The Landlord testified that a One Month Notice to End Tenancy for Cause (the "One Month Notice") was served to the Tenants by posting it on their door on April 18, 2018. The One Month Notice noted the reasons for ending the tenancy as the following:

- The tenant or a person permitted on the residential property by the tenant has
 - significantly interfered with or unreasonably disturbed another occupant or the landlord
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

The stated effective end of tenancy date on the One Month Notice was May 31, 2018.

The Tenants testified that after receiving the One Month Notice, they moved out in April 2018. Notice was provided to the Landlord on April 30, 2018 that they had vacated the rental unit.

The Landlord testified that they received a voicemail from the Tenants on April 30, 2018 notifying them that they had moved out. The Landlord stated that prior to this voicemail, they were not aware that the Tenants would be vacating the unit before May 31, 2018, as stated on the One Month Notice.

The Landlord submitted the move-out Condition Inspection Report in evidence dated May 1, 2018. They stated that the Tenants did not participate as they had abandoned the rental unit. The report notes the rental unit as clean, other than the carpets.

The Landlord testified that the Tenants provided their forwarding address by phone and then confirmed it in person on May 2, 2018 when the keys to the rental unit were returned to the Landlord. The Landlord confirmed during the hearing that they accepted that the Tenants had provided their forwarding address in writing after it was confirmed with them in person on May 2, 2018.

The Tenants provided testimony that their forwarding address was provided in person on May 2, 2018 and they agreed that the move-out condition inspection report was completed without them present.

The Landlord is claiming \$126.00 for the cost to clean the carpets. An invoice dated May 4, 2018 was submitted in evidence for steam cleaning the carpets at a fee of \$120.00 plus tax.

The Tenants testified that the rental unit was clean when they left, including the carpets. However, the Tenants agreed that they were to clean the carpets at the end of the tenancy as per the tenancy agreement. During the hearing, the Tenants agreed to pay for the carpet cleaning, but only if the remainder of their security deposit was returned.

The Landlord's claim also includes \$1,750.00 in unpaid rent; a \$50.00 underpayment of rent for December 2017 and \$1,700.00 unpaid rent for May 2018. The account ledger was submitted in evidence showing the rent payments throughout the tenancy as well as the \$50.00 concession deducted from the account each month.

The account ledger shows that the Tenants paid the following rent:

- October 1, 2017 \$1,750.00
- November 1, 2017 \$1,750.00

- December 1, 2017 \$1,550.00
- December 29, 2017 \$1,700.00
- February 1, 2018 \$1,700.00
- March 1, 2018 \$1,700.00
- March 29, 2018 \$1,700.00

\$50.00 per month was credited to the account for each of the months rent was paid from October 2017 to April 2017 for a total credit of \$350.00.

The Landlord is also claiming \$1,700.00 in unpaid rent for May 2018. The Landlord claimed that the Tenants are responsible for rent for May 2018 due to not providing one month notice to move out and moving out prior to the end of tenancy date as stated on the One Month Notice. The One Month Notice, dated April 18, 2018 was submitted in evidence and shows the end of tenancy date as May 31, 2018.

The Tenants were in agreement that they did not pay rent for May 2018. They testified that as it was the Landlord who wanted them out and provided the notice to end the tenancy, they should not be responsible to pay the rent past the day in which they occupied the rental unit.

The Tenants were also in agreement that they did not provide permission for the Landlord to withhold any amount from their security deposit.

Analysis

Based on the evidence and testimony of both parties, and on a balance of probabilities, I find as follows:

The Landlord has filed the application for the following monetary claims for a total monetary claim of \$1,876.00:

- \$50.00 unpaid rent for December 2017
- \$1,700.00 unpaid rent for May 2018
- \$126.00 carpet cleaning

As the Tenants agreed that the carpets were to be steam cleaned at the end of the tenancy, I find that the Tenants owe the Landlord \$126.00 as per the invoice for carpet cleaning dated May 4, 2018.

The Landlord and Tenants were in disagreement as to whether there was a \$50.00 underpayment in rent from December 2017. I note that in accordance with the

Residential Tenancy Branch Rules of Procedure, the onus is on the Landlord who filed this application to prove their claim.

As the testimony of both parties was conflicting, I look to the account ledger submitted by the Landlord as evidentiary material. Based on the charges and payments stated on the ledger, I determine that an underpayment of \$50.00 was on record from December 2017, and thus remained unpaid at the end of the tenancy.

However, I also note that I am in agreement with the Tenants that the process for paying the rent and then receiving a \$50.00 credit was confusing. This likely left the Tenants unsure of how much to pay each month as it was dependent on the credit available in their account.

Regardless, I do find that the evidence from the Landlord points to an overall underpayment of \$50.00 towards the total \$1,700.00 monthly rent that was due. In accordance with Section 26 of the *Act*, rent must be paid when it was due. Regardless of when or how the \$50.00 credit was applied, I find that \$1,700.00 was due monthly.

The Landlord and Tenant were also in disagreement as to whether the Tenants were responsible for rent for May 2018. A One Month Notice was served on April 18, 2018 and the Tenants made plans to vacate the unit as soon as possible after this. However, I note that the One Month Notice did not require the Tenants to vacate until May 31, 2018.

The Tenants notified the Landlord on April 30, 2018 that they had already moved out. As the Landlord had provided notice to end the tenancy on May 31, 2018, I find they would not have expected to find new tenants for the rental unit until June 1, 2018. As no notice was provided by the Tenants that they were vacating the rental unit early, the Landlord was not able to try to mitigate their loss by renting the unit for May 1, 2018.

Instead, I find that the Landlord experienced a loss of rental income for May 2018 given the Tenants' decision to vacate the rental unit early, prior to when the Landlord was expecting the rental unit to be vacated.

In accordance with Section 7(1) of the *Act*, when one party experiences a loss due to the other party not complying with the *Act* or the tenancy agreement, the party who did not comply must compensate the other for their loss. Pursuant to Section 67 of the *Act*, I determine that the Landlord experienced a loss of \$1,700.00, in the amount of the \$1,750.00 monthly rent minus the \$50.00 credit.

The Landlord has also applied to retain the security deposit towards the compensation owed. To determine whether the Landlord is able to retain the security deposit, I look to Section 38(1) of the *Act*, which states that a landlord has 15 days from the later of the end of tenancy or the date the forwarding address is provided in writing to repay the security deposit or file a claim against it.

The tenancy ended on April 30, 2018 and the forwarding address was provided on May 2, 2018. As such, I find that the Landlord had 15 days from May 2, 2018 to repay or claim against the security deposit. As the Landlord filed the application for dispute resolution on May 10, 2018, I determine that they applied within the timeline allowable under the *Act*. As such, I find that the Landlord may retain the security deposit of \$875.00 as partial satisfaction of the total compensation owed.

As the Landlord was successful in their application, I also award the recovery of the filing fee paid for this application in the amount of \$100.00, pursuant to Section 72 of the *Act*.

A Monetary Order is granted to the Landlord in the amount outlined below.

Monetary Order Calculations

| | |
|--------------------------------|-------------------|
| Carpet cleaning | \$126.00 |
| December 2017 rent owing | \$50.00 |
| May 2018 rent owing | \$1,700.00 |
| Recovery of filing fee | \$100.00 |
| Less security deposit | (\$875.00) |
| Total owing to Landlord | \$1,101.00 |

Conclusion

The Landlord is allowed to **retain the security deposit** in partial satisfaction of the total amount owed.

Following the deduction of the security deposit as per the above calculations, and pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order for the balance due** in the amount of **\$1,101.00** for partial rent owed for December 2017, unpaid rent owed for May 2018 and for the recovery of the filing fee paid for this application.

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: July 6, 2018

Residential Tenancy Branch