



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WESTWOOD RIDGE DEVELOPMENT CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC-S, MND-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order 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;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

The landlord's agents (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenant's brother attended the hearing via conference call and stated that this brother should be calling into the hearing via conference call from out of the country. After waiting 11 minutes past the start of the scheduled hearing time the hearing began in the absence of the tenant. The landlord provided undisputed affirmed testimony that the tenants were both served via Canada Post Registered Mail on May 18, 2018 and that the landlord had presented copies of the completed proof of service documents and the Canada Post Customer Receipt Tracking labels for each tenant as confirmation. I accept the undisputed affirmed testimony of the landlord and find that the tenants were properly served as per section 88 and 89 of the Act and are deemed served as per section 90 of the Act.

At 28 minutes past the start of the scheduled hearing time, the tenant called into the conference call hearing and participated with the assistance of his brother who served as his translator (Farsi-English and English to Farsi). Extensive discussions were made where all tenants were advised that if their conference call connection failed that it was

their duty to attempt to re-connect and that after a time the hearing would proceed in their absence if they were unsuccessful in re-connecting to the hearing. The tenant confirmed that no documentary evidence was submitted for the hearing. At 37 minute past the start of scheduled hearing time the tenant disconnected from the conference call hearing. I waited 5 minutes to allow the tenant to re-connect, but the tenant failed to reconnect to the hearing. The hearing was recommenced in the absence of the tenant. The tenant's brother/translator remained on the line to observe the proceedings.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage, for money owed or compensation for damage or loss and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on October 23, 2017 on a fixed term tenancy ending on October 31, 2018 and then thereafter on a month-to-month basis. The monthly rent was \$2,595.00 payable on the 1st day of each month. A security deposit of \$1,297.50 was paid on October 20, 2017.

During the hearing the landlord clarified the monetary claim by cancelling item #3 (\$157.50, Carpet Stain Removal) as no expense was actually incurred as, no carpet stain removal service was obtained. The landlord seeks a clarified monetary claim of \$2,292.99 which consists of:

| | |
|------------|-------------------------------------|
| \$99.75 | Carpet Cleaning |
| \$262.50 | General Cleaning/ Garbage Removal |
| \$206.24 | Wall Repair(s) and Painting |
| \$1,200.00 | Estimate Replace Damaged Countertop |
| \$525.00 | Liquidated Damages |

The landlord claims that the tenants vacated the rental unit leaving it dirty and damaged requiring cleaning and repairs. The landlord stated that the tenants caused damage to the rental premise walls by installing a wall mounted television without notice or consent of the landlord that required removal and repair/painting of the wall. At the end of

tenancy the landlord discovered the rental unit dirty with a stained carpet and garbage left. The landlord also seeks compensation in the form of liquidated damages of \$525.00 as the owner/landlord was required to pay an additional fee to his property manager to mitigate any possible losses by re-renting the premises. The landlord provided written details that the tenants had given notice to end the tenancy on April 4, 2018 effective on April 25, 2018. The landlord stated that they had waived the one months' rent (\$2,595.00) as part of the liquidated damages as detailed in section 4 of the agreed upon addendum.

Section 4 of the signed and dated Addendum states in part,

If the Tenant ends the fixed term of this Agreement early, the Tenant will pay and reimburse the Landlord's Agent for the following If the Tenant ends the fixed term tenancy before the end of the original term as set out in the Residential Tenancy Agreement, the Landlord may, at the Landlord's option, treat this Agreement as being at and end. In such event, the sum of one month's rent (" \$2,595") plus an additional "\$500" plus applicable taxes will be paid by the tenant to the landlord as liquidated damages, not as a penalty, to cover the administrative costs of re-renting the rental unit. The Landlord and Tenant acknowledge and agree that the payment of liquidated damages will not preclude the landlord from exercising any further right of pursuing another remedy available in law or in equity, including but not limited to, damage to the rental unit or residential property and damages as a result of lost rental income due to the tenant's breach of any term of this Agreement.

In support of these claims the landlord has submitted:

- Copy of signed tenancy agreement dated October 20, 2017
- Copy of signed and dated addendum conditions dated October 20, 2017
- Copy of 18 photographs of the rental premises at the end of tenancy
- Copy of a completed condition inspection report for the move-in dated October 23, 2017
- Copy of a completed condition inspection report for the move-out dated April 27, 2018
- Copy of an invoice dated April 28, 2018 re: cleaning services for \$262.50
- Copy of an invoice dated April 28, 2018 re: Wall Repair/Painting for \$206.24
- Copy of an invoice dated April 30, 2018 re: Carpet Cleaning for \$99.75
- Copy of an email dated May 10, 2018 re: estimate countertop
- Copy an estimate dated May 10, 2018 re: counter top restoration

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 bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

I accept the undisputed affirmed evidence of the landlord and find that the landlord has provided sufficient evidence to satisfy me that the tenants breached the fixed term tenancy by pre-maturely ending the tenancy. The landlord provided undisputed evidence that the carpet was left dirty requiring cleaning; that general cleaning was required as the rental unit was left dirty as shown by the landlord's photographs; the landlord provided undisputed evidence that the tenant had installed a tv mount on the wall without prior notice or consent of the landlord requiring wall repair/repainting. On this basis, the landlord has established a claim for the following:

| | |
|----------|-----------------------------------|
| \$99.75 | Carpet Cleaning |
| \$262.50 | General Cleaning/ Garbage Removal |
| \$206.24 | Wall Repair(s) and Painting |

On the following items of claim, I find that the landlord has failed to provide sufficient evidence to establish a claim.

| | |
|------------|-------------------------------------|
| \$1,200.00 | Estimate Replace Damaged Countertop |
| \$525.00 | Liquidated Damages |

The landlord's claim for replacement of a damaged countertop is unsupported. The landlord relies upon two photographs, the first which provides inconclusive details on the damage to the countertop. The second photograph shows circular images that the landlord claims is burning damage. However, the landlord relies upon an estimate for replacement of the entire countertop, but the landlord has also submitted a letter dated May 10, 2018 which provides for an estimate to clean and seal the countertop to

remove the circular images in the countertop. The landlord has neither repaired nor replaced the countertop. The landlord also seeks liquidated damages of \$500.00, but confirmed that this was only part of the liquidated damages in which the landlord waived the \$2,595.00 portion of this term. The landlord failed to provide sufficient details of an actual cost or loss for this portion of the liquidated damages sought. On this basis, I find that the landlord has failed to provide sufficient evidence to establish a claim for these portions of the landlord's claims. These portions of the claims are dismissed.

The landlord has established a total monetary claim of \$568.49. The landlord is also entitled to recovery of the \$100.00 filing fee. In offsetting this claim, I authorize the landlord to retain the \$568.49 from the currently held \$1,297.50 security deposit. The tenants are granted a monetary order for the difference of \$729.01.

Conclusion

The tenants are granted a monetary order for \$729.01.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the 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: August 23, 2018

Residential Tenancy Branch