Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WAM FINANCIAL MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the "*Act*") for monetary compensation, the return of the security deposit and for the recovery of the filing fee paid for this application.

The Tenant and an agent for the Landlord (the "Landlord") were both present for the duration of the teleconference hearing. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and the Tenant's evidence package by registered mail. The Tenant confirmed receipt of the Landlord's evidence package by registered mail.

The Landlord was notified that only one page of evidence had been uploaded to the Residential Tenancy Branch. The Landlord indicated that she thought all of the evidence from the Landlord had been uploaded and the entire evidence package had been sent to the Tenant. However, the Landlord was notified that verbal testimony would be accepted regarding the Landlord's evidence only, as it had not been submitted prior to the hearing.

Both parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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 Tenant entitled to monetary compensation?

Is the Tenant entitled to the return of the security deposit?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on August 1, 2017 and ended on July 31, 2018. Monthly rent was initially $1,600.00 and was increased to $1,700.00 beginning on February 1, 2018 when a second occupant moved into the rental unit. A security deposit of $800.00 and a pet damage deposit of $800.00 was paid at the outset of the tenancy.

The parties confirmed that on August 6, 2018 the Tenant received $985.75 from the security deposit and pet damage deposit back. The Tenant's forwarding address was provided to the Landlord on the move-out Condition Inspection Report on July 31, 2018.

The Tenant provided testimony that he gave notice to the Landlord on June 30, 2018, that he would be moving out on July 31, 2018. The Tenant decided that when he moved out, he would use the Landlord's cleaners and carpet cleaners to ensure the rental unit was cleaned thoroughly.

The Tenant stated that there were many emails back and forth between himself and the Landlord regarding the arrangement for the cleaning. Through email, the Tenant testified that they agreed that the carpet cleaners would come at 2:45 pm on July 31, 2018 and the general cleaning would take place afterwards. An email dated July 15, 2018 was submitted into evidence. The email is from the Landlord to the Tenant and states that the cleaners will be at the rental unit in the afternoon.

The Tenant provided testimony that he had originally arranged for the movers to come at 9:00 am, but they requested to change the time to 10:00 am. Around 10:30 am, the cleaners arrived at the rental unit. As the moving was still in process, the Tenant asked the cleaners to come back in the afternoon, around 1:00 pm.

The Tenant submitted a letter from the moving company into evidence, in which the mover stating that the cleaners arrived around 10:30 am and the Tenant asked them to come back at 1:00 pm. The letter states that had the cleaners began their work, the move would have taken longer for the movers to complete.

The Tenant testified that later on July 31, 2018 he received an email from the Landlord stating that as he refused to allow entry to the cleaners, he would be responsible for paying for their time. An invoice from the cleaners was submitted into evidence, stating 2.5 hours of cleaning for 3 people was charged for the cleaning time, in addition to 2.5 hours of time when they were not able to enter the rental unit. The total for the invoice was $472.50.

The Tenant has claimed for the return of $472.50, as he does not believe he should be responsible for the 2.5 hours of additional time that was charged by the cleaners. Although the additional charge was $236.25, the Tenant stated that he had received advice to claim for double the amount.

The Tenant has also claimed for $94.50 as he does not believe 2.5 hours of cleaning with 3 people was needed in the rental unit. The Tenant submitted photos of the rental unit into evidence. Again, this is double the amount that the Tenant believes was overcharged. The initial amount before being doubled is $47.25, which is calculated at 1.5 hours of cleaning by 1 person, at the rate charged by the cleaners.

On August 11, 2018, the Tenant deposited the cheque for the return of his deposits in the amount of $985.75. This amount was returned after deductions of $472.50 for the cleaners and $141.75 for the carpet cleaning.

The Landlord provided testimony that on July 4, 2018, the Tenant requested to use the Landlord's cleaners and carpet cleaners for the rental unit. She stated that the cleaners were originally scheduled for July 30, 2018 and the carpet cleaners for the morning of July 31, 2018. However, the Landlord rearranged the cleaners to accommodate the Tenant. She also allowed the Tenant to vacate the unit after 1:00 pm, which required her to change arrangements with the new tenants who were moving in that day.

She rearranged the carpet cleaners to come at 2:45 pm on July 31, 2018 and the cleaners to come in the afternoon of July 31, 2018. An exact time was not booked with the cleaners, but the Landlord stated her understanding that they would arrive anytime after 12:00 pm on July 31, 2018.

The Landlord stated that the cleaners arrived at the rental unit around 10:30 am, and that it was never agreed that they would be arriving after the carpet cleaners. She submitted that the cleaners would have been able to work around the movers. However, as the Tenant asked the cleaners to leave until 1:00 pm, the cleaners billed for their time from 10:30 until 1:00 pm, in addition to the time spent cleaning.

As for the cost of the cleaning, the Landlord stated that the cleaners did a deep clean of the whole unit, include washing the walls due to the Tenant's large dog who was present during the tenancy. She stated that the amount charged by the cleaners was fair based on the amount of cleaning required.

The Landlord testified that no exact amounts had been agreed upon for the cleaners and carpet cleaner, but through email the Tenant was provided with estimates. The estimates provided by the Landlord were $350.00 for cleaning and $250.00 for the carpet cleaning. The actual cleaning cost was $472.50 and the carpet cleaning was $141.75, with the carpet cleaning cost

less than what was estimated. The email from the Landlord to the Tenant, dated July 18, 2018, was submitted into evidence in which she states the estimated costs for both cleaners.

The Landlord provided testimony that she is not sure why the cleaners arrived at 10:30 am, and that she was not aware that they would be doing so. The Landlord noted that there were 5 move-ins and move-outs happening that day, which made coordinating challenging. She also noted that she rearranged the cleaners many times for the Tenant to accommodate his move-out schedule.

The Landlord also noted that that Tenant provided his notice to end the tenancy by email on June 30, 2018, which was not received until July 2018, due to it being sent on a weekend. However, she stated that they accepted the Tenant's notice by email, and accepted his move out date of July 31, 2018, despite not receiving one full month of written notice.

Analysis

I refer to Section 38(1) of the *Act* which states the following:

> 38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
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> (a) the date the tenancy ends, and
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> (b) the date the landlord receives the tenant's forwarding address in writing,
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> the landlord must do one of the following:
>
> (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
>
> (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

As the tenancy ended on July 31, 2018, the same day that the Tenant's forwarding address was provided, I find that the Landlord returned the remainder of the deposit on August 6, 2018, within the 15 days allowable.

However, Section 38(4) of the *Act* states that the Landlord may retain an amount from the security deposit that the Tenant agreed to in writing. The parties were in agreement that the Tenant asked to have the cleaners arranged by the Landlord. Although an exact amount was not determined, an email exchange confirms that estimates of $350.00 for cleaning and $250.00 for carpet cleaning was discussed and agreed upon.

Although email is not a method of service under the *Act,* I find that the parties established communication by email throughout the tenancy. This includes the Landlord's acceptance of the Tenant's notice to end the tenancy by email. As such, I find that through email, the Tenant agreed to the Landlord withholding up to the estimated amounts for cleaning and carpet cleaning.

Therefore, I find that the Tenant is not entitled to a return of $94.50 from the cleaning bill, as he agreed to cleaning in an amount up to $350.00. I decline to award the Tenant any compensation for the 2.5 hours of cleaning charged by the Landlord's cleaners.

As for the Tenant's claim for the half of the cleaning bill that was charged for the cleaners' time, I refer to the email exchanges between the parties. Based on the emails submitted, as well as the testimony of both parties during the hearing, I find that the cleaners had arranged to come in the afternoon of July 31, 2018.

As they arrived at 10:30 am, I find it reasonable that the Tenant would have asked them to return in the afternoon, as originally planned. I also find the letter from the moving company to demonstrate that the movers were in agreement that the cleaning should begin once they were finished.

As the movers stated that working around the cleaners may have taken them more time to move, I find that this may have resulted in additional charges to the Tenant from the movers.

The emails submitted into evidence confirm that the cleaners were arranged for the afternoon of July 31, 2018, not in the morning. This was also confirmed by both parties.

As I find that the Tenant was not responsible for the cleaners arriving early, and did not agreed to additional charges beyond the estimated amounts, I find that the Landlord should not have withheld this amount from the security deposit. The amount charged by the cleaners was half of the total bill, in the amount of $236.25.

As the Landlord did not have permission to withhold any additional amount from the security deposit, other than the cleaning and carpet cleaning amounts, I find that the Landlord withheld the amount of $236.25 without the Tenant's permission.

As such, the doubling provision of Section 38(6) applies, and the Tenant is entitled to double this amount for a total of $472.50. I determine that this amount should have been returned to the

Tenant within 15 days, or the Landlord could have filed for Dispute Resolution regarding this amount.

As the Tenant was partially successful in his Application, I also award the recovery of the filing fee in the amount of $100.00, pursuant to Section 72 of the *Act.*

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a **Monetary Order** in the amount of **$572.50**, for the return of a partial amount of the security deposit, and for the recovery of the filing fee for this application. 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: October 31, 2018

Residential Tenancy Branch