



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

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

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing and was affirmed to be truthful in her testimony. No one called in for the Tenants during the hearing.

The Landlord provided testimony that the Notice of Dispute Resolution Proceeding and a copy of their evidence was sent to each tenant by registered mail. The Landlord submitted the registered mail tracking information showing that both packages were signed for and delivered on August 7, 2018. The registered mail tracking numbers are included on the front page of this decision.

I find that both Tenants were duly served with the Notice of Dispute Resolution Proceeding package and the Landlord’s evidence in accordance with Sections 88 and 89 of the *Act*.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch 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 award for compensation and/or damages?

Should the Landlord be allowed to retain the security deposit towards any compensation owed?

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

Background and Evidence

The Landlord provided undisputed testimony regarding the tenancy. The tenancy began on April 1, 2015. On April 1, 2018, the parties entered into a new one-year fixed term agreement, set to end on March 31, 2018.

The tenancy agreement was between the Landlord and two tenants. However, the Landlord stated that one Tenant resided in the rental unit, while the other was a co-signer. The Tenant moved out on June 30, 2018.

Monthly rent at the end of the tenancy was \$1,217.00 and a security deposit of \$550.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the Landlord.

The Landlord has applied for \$608.50 as liquidated damages due to the tenant moving out prior to the end of the fixed term agreement. Section 3.1 of the tenancy agreement states that this amount is an estimate of the costs of advertising and re-renting the unit. The Landlord testified that they received an email from the Tenant on May 28, 2018, stating that she would be moving out on June 30, 2018.

The Landlord stated that on June 30, 2018, one of the Tenants participated in the move-out inspection. The Condition Inspection Report was submitted into evidence and was signed by the Landlord and Tenant at move-in on March 27, 2015 and move out on June 30, 2018.

On the report at move-out, the Landlord stated that the Tenant agreed to deductions from the security deposit for cleaning, carpet cleaning, repairs/damages, key/fob replacement and painting, but did not agree to a specific amount being deducted.

The Landlord stated that they are still in possession of the full security deposit amount. Once they had specific costs for the cleaning and repairs needed, they sent these to the Tenants and stated that the Tenants did not agree to any deductions from their security deposit for the specific amounts requested.

The Landlord received the Tenants' forwarding address in writing at the move-out inspection on June 30, 2018.

The Landlord has claimed a total of \$554.50 for repairs and cleaning. She stated that \$367.50 is owed for repairs, which was drywall repair on the walls and the repair of a light fixture. The Landlord submitted photos of the drywall damage and the broken light fixture into evidence. The Condition Inspection Report at move-out notes dings, scuffs and cracks in the drywall, while no damage to the drywall was noted on the move-in inspection.

The Landlord also submitted an invoice from a construction company dated July 10, 2018 for the amount of \$367.50 for drywall repair and the replacement of a damaged light fixture.

The Landlord is seeking compensation for carpet cleaning in the amount of \$147.00. Photos of the carpet were submitted into evidence, as well as an invoice from a carpet cleaning company dated July 6, 2018. The Condition Inspection Report at move-out states that the carpet in the bedroom was stained and requires cleaning.

The Landlord is also seeking compensation in the amount of \$40.00, as this was provided to the next tenant that moved into the rental unit on July 1, 2018. The Landlord testified that as cleaning and repairs were required, they provided \$40.00 to the next tenant in the unit as compensation for the inconvenience of having these completed at the start of the tenancy, as well as the replacement of missing or burnt out lightbulbs. As stated by the invoices, the carpet cleaning was completed July 6, 2018 and the repairs on July 10, 2018.

A statement from the property management company, dated July 3, 2018, was submitted into evidence. This statement notes that the new tenant in the rental unit was provided a \$40.00 credit.

Analysis

Based on the undisputed testimony and evidence of the Landlord, and on a balance of probabilities, I find as follows for each of the Landlord's claims.

Liquidated damages: I refer to *Residential Tenancy Policy Guideline 4: Liquidated Damages* which states that a liquidated damages fee must be a pre-estimate of the loss at the time the agreement was entered into and must not be a penalty.

As the tenancy agreement states the amount of the liquidated damages fee, I find that both parties signed as to their understanding of the fee. I also accept the testimony of the Landlord that this is an estimate of the cost to advertise and re-rent, and find this to be explained in the tenancy agreement as well. Further to this, I do not find the amount to be unreasonable, and therefore do not find that the amount is likely to constitute a penalty.

The tenancy agreement was for a fixed term of April 1, 2018 to March 31, 2019, so when the Tenants provided notice to end the tenancy on June 30, 2018, I find they were in breach of Section 45 of the *Act*. Section 45(2) of the *Act* states that a fixed term tenancy cannot be ended prior to the date specified in the tenancy agreement as the end of the term.

Therefore, I find that the liquidated damages fee noted in the tenancy agreement applies as the Tenants breached the fixed term agreement. The Landlord is entitled to the liquidated damages in the amount of \$608.50.

Repairs: I refer to Section 21 of the *Residential Tenancy Regulation* which states the following:

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 the Condition Inspection Report submitted into evidence to be compelling evidence as to the condition of the rental unit at the beginning and end of the tenancy, which was signed by both parties.

I also refer to *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* which outlines a four-part test to determine whether compensation is due:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I find the photos and the Condition Inspection Report to be evidence that the Tenants breached Section 37 of the *Act*, in that the damages that occurred during the tenancy were beyond reasonable wear and tear.

I also find that the Landlord proved the value of their loss through the invoice from the construction company. I also find that the amount charged for repairs to be reasonable based on the photos showing the damage to the walls and the light fixture, demonstrating that they minimized their losses.

Therefore, I find that the Landlord is entitled to compensation in the amount of \$367.50.

Carpet Cleaning: As above, I find the Condition Inspection Report and the photos to be evidence that there were stains on the carpet that required professional cleaning.

I also refer to *Residential Tenancy Policy Guideline 1: Responsibility for Residential Premises*, which states the following:

The tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy.

As this tenancy was longer than one year, and the photos demonstrate stains on the carpet, I find that the Tenants are responsible for the cost of professional carpet cleaning in the amount of \$147.50.

Compensation to next tenant: Again, I refer to the four-part test outlined above and find that the Landlord experienced a loss from compensating the next tenancy in the rental unit for cleaning, repairs and lightbulb replacement.

I find that they provided this compensation to the next tenant in the rental unit due to the Tenants' breach of Section 37 of the *Act*, in that the rental unit was not left in a reasonably clean or undamaged condition, thus causing the next tenant to move in before the cleaning or repairs were completed. I find documentary evidence to establish how much compensation was provided to the next tenant and find the amount provided to be reasonable. As such, I find that the Landlord is entitled to compensation in the amount of \$40.00.

Security deposit: I refer to Section 38(1) of the *Act* which states that from the later date of the tenancy ending or the forwarding address being provided in writing, the landlord must return the security deposit or file a claim against it.

As the tenancy ended on June 30, 2018, the same day that the Tenants' forwarding address was provided in writing, I find that the Landlord had 15 days from this date to file their claim. As they applied on July 13, 2018, I find that they applied within the timeframe provided under the *Act*.

Therefore, I find that the Landlord may retain the security deposit towards the total amount owing.

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

The Landlord is awarded a Monetary Order in the amount outlined below:

Liquidated damages	\$608.50
Repairs	\$367.50
Carpet cleaning	\$147.00
Compensation to new tenant	\$40.00
Filing fee	\$100.00
<i>Less Security deposit</i>	<i>(\$550.00)</i>
Total owing to Landlord	\$713.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$713.00** for repairs, cleaning, compensation and liquidated damages, as well as the recovery of the filing fee 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: November 21, 2018

Residential Tenancy Branch