



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LESCA HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

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

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The two "tenants" ("individual tenant" and "tenant company") did not attend this hearing, which lasted approximately 21 minutes. The landlord's agent ("landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the president of the landlord company named in this application and that she had permission to speak on its behalf. The landlord's husband was observing but did not testify at this hearing.

The landlord testified that the tenants were each served separately with the landlord's application for dispute resolution and notice of hearing on September 25, 2018, by way of registered mail to the forwarding address provided by the individual tenant in the move-out condition inspection report. The landlord provided two Canada Post tracking numbers verbally during the hearing as well as the Canada Post printed tracking reports with this application. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's application and notice of hearing on September 28, 2018, five days after their registered mailings.

The landlord testified that the tenants were each served separately with the landlord's written evidence package on December 11, 2018, by way of leaving copies in the tenants' mailbox at the forwarding address provided by the individual tenant in the move-out condition inspection report. The landlord provided copies of two envelopes with notes indicating the person at the tenants' post office box address left both copies in the tenants' mailbox. In accordance with sections 88 and 90 of the *Act*, I find that both tenants were deemed served with the landlord's written evidence package on December 14, 2018, three days after copies were left in the tenants' mailbox.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. This tenancy began on September 10, 2017 and ended on August 25, 2018. Monthly rent in the amount of \$2,795.00 was payable on the first day of each month. A security deposit of \$1,397.50 was paid by the tenants and the landlord continues to retain the deposit. A written tenancy agreement was signed by the landlord and the individual tenant, on behalf of the tenant company, and a copy was provided for this hearing. The individual tenant provided a written, signed guarantee that if the tenant company could not pay the rent, that he would personally be responsible for it. A copy of this guarantee was provided for this hearing. Move-in and move-out condition inspection reports were completed for this tenancy and copies were provided for this hearing. A written forwarding address was provided by the tenants to the landlord on the move-out condition inspection report on August 25, 2018. The landlord had written permission to keep the tenants' security deposit for cleaning of two to three hours at \$20.00 per hour and for outstanding rent of \$2,254.00

for August 2018. The landlord filed this application to retain the tenants' security deposit on September 24, 2018.

The landlord seeks a monetary order of \$2,254.00 for unpaid rent, \$60.00 for cleaning, and \$100.00 for the application filing fee.

The landlord testified that the tenants failed to pay rent of \$2,254.00 for August 2018, which she said she prorated from August 1 to 25, since the individual tenant did not reside there for the entire month of August. The landlord provided a handwritten signed note from the individual tenant, indicating that he owed \$2,254.00 in rent to the landlord for August 2018 and that if he did not pay it to the landlord by August 30, 2018, the landlord could keep that amount from his security deposit. The landlord said that the tenant did not pay this amount to her at all, prior to this hearing.

The landlord stated that she was also seeking cleaning of \$60.00, for which she provided an invoice of three hours of work at \$20.00 per hour, indicating that she paid cash to the cleaner. She said that the individual tenant failed to adequately clean the rental unit when he vacated. The landlord provided the same handwritten signed note from the individual tenant indicating that he would pay for two to three hours of cleaning at \$20.00 per hour. Cleaning was also indicated on the move-out condition inspection report, where the individual tenant signed and agreed to use his security deposit towards two to three hours of cleaning at \$20.00 per hour.

Analysis

Section 26 of the *Act* requires tenants to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent totalling \$2,254.00 from August 1 to 25, 2018. The landlord provided a handwritten note from the individual tenant allowing the landlord to retain his security deposit towards the unpaid rent for August of \$2,254.00. Accordingly, I find that the landlord is entitled to rental arrears of \$2,254.00 from the tenants.

The landlord provided undisputed evidence that the tenants failed to adequately clean the rental unit when they vacated. She confirmed that she hired a cleaner to clean the unit for three hours at \$20.00 per hour, provided an invoice for \$60.00, and confirmed she paid this amount in cash. She also provided a handwritten note from the individual tenant as well as the move-out condition inspection report indicating the individual tenant agreed the rental unit needed cleaning and allowing the landlord to retain his security deposit for two to three hours of cleaning for \$20.00 per hour. Accordingly, I find that the landlord is entitled to cleaning of \$60.00 from the tenants.

The landlord continues to hold the tenants' security deposit of \$1,397.50. Over the period of this tenancy, no interest is payable on the deposit. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenants' entire security deposit totalling \$1,397.50, in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants.

Conclusion

I order the landlord to retain the tenants' entire security deposit of \$1,397.50, in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$1,016.50 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) 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: January 23, 2019

Residential Tenancy Branch