



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKC HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S

Introduction

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

- 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; and
- a monetary order for damage to the rental unit in the amount of \$525.00 pursuant to section 67.

The tenant was represented by the mother of the deceased. The landlord was represented by the property manager. Each was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The property manager testified, and the tenant's representative confirmed, that the landlord served the tenant's representative with the notice of dispute resolution form and supporting evidence package. The tenant's representative testified, and the property manager confirmed, that the tenant's representative served the landlord with her evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issue(s) to be Decided

Is the landlord entitled to:

- retain the tenant's security deposit of \$525.00 in satisfaction of the monetary order requested; and
- a monetary order for damage to the rental unit in the amount of \$525.00?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting September 1, 2018. Monthly rent is \$1,050.00 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$525.00. The landlord still retains this deposit.

At a previous hearing before an arbitrator of the Residential Tenancy Branch (the "RTB"), the landlord obtained an order of possession against the tenant effective November 30, 2018. The previous hearing number is quoted in the front page of this decision.

On November 22, 2018, the tenant passed away in the rental unit. He died in the bathroom shower, which was running. His body was not discovered for four days.

The tenant's representative testified that her other son attended the rental unit, and over the course of three or four afternoons, he tidied the rental unit, sorted through the tenant's belongings, and arranged for a disposal company to attend the rental unit and remove its contents. She testified that her son lost out on a week's wages doing this work, and paid the disposal company \$170.00.

The parties agree that the landlord had vacant possession of the rental unit as of November 30, 2018.

The property manager testified that the rental unit was significantly damaged when vacant possession was delivered. She testified that the coroner recommended that she hired a crime scene clean-up company to clean the rental unit.

The landlord did not submit any documentary evidence to the RTB in support of its claim, other than a copy of the tenancy agreement. However, the property manager did supply the tenant's representative with copies of two receipts for the expenses incurred in cleaning the rental unit. The tenant's representative read these receipts contents to me, and did not dispute them in any way.

The first receipt is for \$525.00, representing an initial cleaning of the rental unit, including a scrubbing of the floor, a “deep cleaning” of the bathroom, and a light cleaning of all surfaces in the rental unit.

The second receipts is for \$120.00, representing five hours of work to steam clean the walls and other surfaces in the rental unit.

The property manager testified that she received quotes for cleaners as high as \$2,200.00 to do the required work. She testified that she also did eight hours of cleaning in the rental unit, for which she is not claiming compensation.

The tenant’s representative did not dispute that the rental unit required significant cleaning. She testified that the “humidity created a detrimental impact on the interior of the apartment; most of the impact was the smell and the drippings on the floor from the humidity releasing old tobacco tar from the ceiling from previous tenants.”

The tenant’s representative testified that the tenant never received a copy of the move-in condition inspection report. She testified that she has knowledge of this as she assisted the tenant in preparing for his prior hearing before the RTB, and his records did not include a copy of this document.

The property manager testified that the tenant’s representative was mistaken, and that she left a copy of the move-in condition inspection report with the tenant after the inspection was conducted. She testified that it is her practice to do this with all new tenants.

Analysis

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

Accordingly, as the landlord is claiming for damages, it bears the onus to prove that those damages occurred.

Likewise, as the tenant's representative claims that the tenant never received a copy of the move-in condition inspection report, the tenant's representative bears the onus of proving this to be the case.

Move-In Condition Inspection Report

The tenant's representative alleges that the landlord failed to provide the tenant with a copy of the move-in inspection report. The completion of such a report is required by the Section 23(4) of the Act, which states:

Condition inspection: start of tenancy or new pet

(4) The landlord must complete a condition inspection report in accordance with the regulations.

Section 24(2) of the Act states:

Consequences for tenant and landlord if report requirements not met

(2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

As such, if I find that the landlord failed to provide the report to the tenant, the landlord's ability to claim against the security deposit would be extinguished, and, per Policy Guideline 17, the tenant would be entitled to the return of double the amount of the deposit.

I should note that neither party gave evidence as to whether a move-out condition inspection report was made. In light of the fact that the condition of the rental unit at the end of the tenancy is not in dispute, and the fact that the tenant's representative did not raise it as a potential basis to oppose the landlord's application, I make no findings as to whether a move-out condition inspection report was made.

As discussed above, the tenant's representative bears the onus to demonstrate that the landlord failed to provide the tenant with a copy of the condition inspection report. The tenant's representative testified that she did not see a copy of the report when she assisted the tenant in preparing for the prior RTB hearing. The property manager testified that she did provide a copy to the tenant, and that it is her practice to always do so with new tenants.

Of the two, I find the property manager's testimony to be more likely. I make this finding on the basis that the tenant's representative does not have first-hand knowledge of what occurred at the start of the tenancy, whereas the property manager does. This does not mean that I disbelieve the tenant's representative's testimony that she did not see a copy of the move-in condition inspection report when she was assisting the tenant to prepare for the prior RTB hearing.

I find that the tenant's representative has failed to meet the evidentiary burden to prove that it did not receive a copy of the move-in condition inspection report.

Landlord's Claim for Damages

The landlord claims \$525.00 in damages related to the cleaning of the rental unit. Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- 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.

The landlord must first prove that the tenant has breached the Act. It alleges that the tenant did so by leaving the rental unit in a state of damage at the end of the tenancy. Section 37 of the Act states:

Leaving the rental unit at the end of a tenancy

37(2) When a tenant vacates a rental unit, the tenant must

- (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

Despite the tragic circumstances leading to the end of the tenancy, these circumstances do not relieve the tenant or the tenant's estate of the tenant's obligations under the Act. The death of a party does not terminate a tenancy. Based on the testimony of the property manager and of the tenant's representative, I find that the rental unit was not in a reasonably clean state when the landlord received vacant possession of it. As such, I find that the tenant breached section 37(2) of the Act.

I accept the property manager's testimony that the landlord suffered damage as the result of the breach. I find that the landlord incurred costs in relation to cleaning the rental unit. I accept that the receipts provided by the landlord to the tenant accurately assess the landlord's costs. As such, I find that the landlord suffered \$645.00 in damages, as follows:

First cleaning, including deep cleaning of bathroom	\$525.00
Second cleaning, including steam cleaning	\$120.00
Total	\$645.00

Finally, I accept the property manager's evidence that she received quotes as high as \$2,200.00 to clean up the rental unit. I find that, in the circumstances, \$645.00 is not an unreasonably high amount to pay for cleaning services of the kind required. I find that the landlord acted reasonably to minimize its damages.

As the landlord has only made a claim for \$525.00 (the amount of the security deposit), and not for the full amount of damage suffered, (\$645.00), I order that the tenant's estate pay the landlord \$525.00 in compensation for the damages suffered by the landlord for the tenant's breach of the Act. Pursuant to section 72(2) of the Act, I order that the landlord may retain the security deposit in full satisfaction of this amount.

I acknowledge that the tenant's family incurred monetary loss in connection with cleaning the rental unit following the tenant's death. However, this is not a basis for the return of any part of the security deposit. A security deposit is meant to secure the landlord against damage it may suffer at the hands of a tenant (whether intentional or

not). It is not meant to be used to defray the tenant's costs of cleaning the rental unit. These are costs which a tenant is obligated to incur pursuant to section 37(2) of the Act.

Conclusion

Pursuant to section 67 of the Act, I order that the tenant pay the landlord \$525.00.

Pursuant to section 72(2) of the Act, I order that the landlord may retain the security deposit in full satisfaction of this amount.

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: April 05, 2019

Residential Tenancy Branch