



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH POOL XIV LP METCAP
LIVING MANAGEMENT INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

FFL MNDCL-S

Introduction

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

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the security deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent and counsel. The co-tenant YT (the "tenant") primarily spoke on behalf of both tenants.

As both parties were present service was confirmed. The parties each testified that they had been served with the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing, the landlords made an application requesting to amend the monetary amount of the claim sought. The landlords indicated that since the application was filed the parties have come to an agreement regarding some of the items claimed. Pursuant to section 64(3)(c) of the *Act* and Rule 4.2 of the Rules of Procedure, as a monetary claim being reduced when the parties agree to some of the items is reasonably foreseeable, I amend the landlords' Application to decrease the landlords' monetary claim to \$2,789.00.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to retain the security deposit for this tenancy?

Are the landlords entitled to recover the filing fee from the tenants?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This fixed term tenancy began in February, 2019 and was scheduled to end on January 31, 2020. The tenants gave written notice to end the tenancy on May 31, 2019 and the tenancy ended at the end of June, 2019. The tenants had provided a forwarding address to the landlord prior to the tenancy ending. The monthly rent was \$1,714.00 payable on the first of each month. A security deposit of \$857.00 was collected at the start of the tenancy and is still held by the landlord. The parties participated in a move-in and move-out inspection and prepared a condition inspection report.

One of the terms of the written tenancy agreement signed by the parties is a Liquidated Damage Clause which provides that if the tenant ends the fixed term tenancy prior to the full term of the agreement then an amount equivalent to one month's tenancy is payable as liquidated damages, an estimate of the losses that the landlord may incur. The landlord seeks a monetary award in the amount of \$1,714.00 for liquidated damage due to the tenants' early end of the fixed term tenancy.

The landlords submit that while they did not indicate on the condition inspection report that the walls of the suite required painting or that there were any losses related to the

condition of the suite, they incurred costs for repainting of the suite after the tenancy had ended. The landlords submit that the tenants left numerous holes in the rental suite walls requiring patching and repainting. The landlords say that the tenants attempted some repair work but they were incomplete and that the landlord was required to paint and finalize the reparations. The landlord submitted into evidence an invoice showing the amount of the work performed to be \$700.00 and seek a monetary award in that amount accordingly.

The landlord seeks an amount of \$375.00 arising from a parking agreement. The tenants testified that they agree with this amount and did not dispute the landlord's claim for this item.

The tenants dispute the landlords' claim for liquidated damage and submit that the landlord did not suffer any losses due to their early end of the fixed term tenancy.

The tenants dispute the landlords' claim for damages arising from painting of the suite and say that the repairs to the walls are not indicated as being required in the move-out condition inspection report. The tenants have submitted into evidence a video showing their attempts at performing repairs and patching the holes in the wall.

Analysis

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing.

In the present case the tenants had provided a forwarding address prior to the tenancy ending on June 30, 2019 and the landlord filed their application for dispute resolution on July 11, 2019. As such, I find that the landlord was within the timeline allowed under the *Act* to file their application for authorization to retain the security deposit.

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.

The parties have agreed to the landlord's claim of \$375.00 for parking expenses and I issue a monetary award in that amount accordingly.

I am satisfied that the signed tenancy agreement contains a liquidated damage clause allowing the landlords to recover an amount the equivalent of one months' rent, \$1,714.00, if the tenants end the fixed term tenancy earlier than the full term. I find that the amount of the damage, the circumstances in which the amount becomes payable, and the landlords' testimony regarding the manner by which the amount was pre-estimated is sufficient to establish that this is a true liquidated damage clause and not a penalty clause.

Residential Tenancy Policy Guideline 4 provides that:

If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum even where the actual damages are negligible or non-existent.

Accordingly, I find that the tenants' submissions questioning the real amount of the losses incurred by the landlord to be irrelevant to the matter at hand. I find that the clause in the tenancy agreement signed by the parties to be a valid and enforceable liquidated damage clause. I accept the evidence of the parties that the tenants ended the tenancy before the full term and as a result are obligated to pay the amount of \$1,714.00, the equivalent of one month's rent as liquidated damages.

I find the tenants' submissions about the reasons for their breaching the tenancy agreement and ending the tenancy to be irrelevant to the matter at hand and not supported in the evidence in any event.

While the condition inspection report does not indicate that the parties saw any deficiencies in the state of the walls at the end of the tenancy the landlords claim that the rental unit required work for painting the walls in the amount of \$700.00.

Residential Tenancy Regulation 21 provides that:

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.

Based on the submissions of the parties I am satisfied that there is a preponderance of evidence to show that the walls of the rental unit required work at the end of the tenancy. The landlords gave testimony about the condition of the suite and the tenants' own video evidence shows that the walls of the rental unit throughout have discolored patches where it appears the tenants have attempted to fix holes. I find that these discolored areas are plainly visible, noticeable and a deficiency which a reasonable landlord would correct in order to make the suite suitable for occupancy.

While the tenants submit that they could have completed the repainting themselves, they did not do so and the landlords bore the cost of the work. I do not find the tenants' submission that they were informed by the landlord that they would not be required to paint the suite or that they would not be responsible for the cost of painting to be credible or supported in the materials.

I am satisfied with the landlord's evidence by way of the receipt for work completed that the cost of repainting was \$700.00. Accordingly, I issue a monetary award in the landlord's favour in that amount.

As the landlords were successful in their application they are entitled to recover their filing fee.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain the tenants' \$857.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,032.00, allowing the landlords to recover their filing fees, satisfy their claim for damages and retain the security deposit for this tenancy. 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: October 24, 2019

Residential Tenancy Branch