



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KELSON GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-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, to retain the security deposit towards compensation owed, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Two agents for the Landlord (the “Landlord”) were present for the hearing while no one called in for the Tenants. The agents were affirmed to be truthful in their testimony and stated that the Tenants were each served with the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence by registered mail. The Landlord submitted copies of the registered mail receipts and the tracking numbers are included on the front page of this decision.

Entering the tracking numbers on the Canada Post website confirms that both packages were mailed on August 16, 2019 and were returned to the sender after not being claimed. I accept the evidence before me and find that the Tenants were served by registered mail in accordance with Sections 88 and 89 of the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

The Landlord stated that they did not receive any evidence from the Tenants although they had received notice of hearing documents regarding an application filed by the Tenants which was later cancelled. The Landlord noted that they did not have an address for the Tenants until receipt of the hearing documents.

I have considered 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 monetary compensation?

Should the Landlord be authorized to retain the security deposit towards compensation found to be owing?

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 on the tenancy which was confirmed by a copy of the tenancy agreement that was included as evidence, although some parts of the agreement were difficult to read due to the quality of the copy. The tenancy began on August 1, 2018 and was for a fixed term of one year, set to end on July 31, 2019. Rent in the amount of \$1,600.00 was due on the first day of each month. A security deposit of \$800.00 was paid at the start of the tenancy and of which the Landlord still holds.

The Landlord testified that the Tenants moved out on June 24, 2019 and that a move-out inspection was conducted on June 27, 2019.

The Landlord has applied for compensation in the amount of \$835.00 which includes claims for cleaning, carpet cleaning, junk removal and liquidated damages.

The Landlord testified that on June 3, 2019 the Tenants provided written notice to end the tenancy on June 30, 2019. A copy of the notice was submitted into evidence and was signed by the Tenants on June 3, 2019 stating their intention to move out on June 30, 2019.

The Landlord stated that they asked the Tenants repeatedly regarding a move-out inspection but did not get a response. They stated that they entered the rental unit on June 26, 2019 and found everything gone with the exception of a mattress and that the keys were left on the kitchen counter. The Landlord stated that they completed the move-out inspection without the Tenants due to not hearing back from them and the Tenants vacating the rental unit. They submitted a copy of the Condition Inspection

Report signed by both parties at move-in on July 28, 2018 and by the Landlord only on June 27, 2019.

The Landlord testified that the Tenants did not agree to any deductions from the security deposit. They stated that they did not receive a forwarding address from the Tenants and instead that they were aware of the Tenants' new address due to an Application for Dispute Resolution filed by the Tenants.

The Landlord has applied for compensation for cleaning in the amount of \$125.00. They submitted a copy of the receipt dated June 30, 2019 which outlined 5 hours of cleaning including the kitchen, bathroom, laundry room and deck at an amount of \$25.00 per hour for a total of \$125.00. They further testified that the laundry room was full of cat litter despite the Tenants not having permission to have a cat.

The Landlord has also claimed \$105.00 for carpet cleaning. They submitted an invoice dated July 13, 2019 in the amount of \$105.00. The Landlord referenced clause 23 in the tenancy agreement which states that the Tenants are to pay to have the carpets professionally cleaned at the end of the tenancy.

The Landlord have also claimed \$105.00 for the removal of a mattress that was left in the rental unit after the Tenants moved out. The Landlord referenced text messages submitted into evidence in which the Tenants inquire on June 24, 2019 about how much the Landlord will charge for taking the mattress to the trash. In the text message the Tenants also wrote that they are moving out that day. The Landlord responded on June 24, 2019 that it would be cheaper for the Tenants to remove the mattress themselves.

The Landlord submitted a copy of an invoice from a junk removal company dated June 29, 2019 in the amount of \$105.00 for disposal of the mattress.

Lastly, the Landlord has claimed \$500.00 for a liquidated damages fee due to the Tenants ending the fixed term tenancy early. They referenced the first page of the tenancy agreement which states in part the following regarding liquidated damages:

If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$500.00 as

liquidated damages and not as a penalty for all costs associated with re-renting the rental unit.

Analysis

As the Landlord has applied for monetary compensation, I refer to Section 7 of the Act which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Regarding the Landlord's claim for cleaning costs, as stated in Section 37 of the Act, a tenant must leave the rental unit reasonably clean and undamaged at the end of the tenancy. I accept the undisputed testimony of the Landlord that the rental unit was not left clean such that it required 5 hours of cleaning and therefore find that the Tenants were in breach of the Act. I also accept the receipt for cleaning submitted into evidence by the Landlord and therefore find that they have established the value of their loss at \$125.00. I award this amount to the Landlord.

As for the claim for carpet cleaning, I also accept the testimony of the Landlord that the Tenants had not cleaned the carpet as they had agreed to in the signed tenancy agreement. I also find it reasonable in a tenancy of almost a year that the carpet should be steamed cleaned, particularly if there were pets in the rental unit as stated by the Landlord. Therefore, I find that the Tenants breached the tenancy agreement by not cleaning the carpet and award the Landlord \$105.00 as claimed and as established by the receipt submitted into evidence.

Regarding the Landlord's claim for junk removal, I accept the evidence before me and find that the Tenants left the mattress at the end of the tenancy to be disposed of. In the text messages submitted by the Landlord the Tenants inquire about having the Landlord dispose of the mattress and also note that they are moving out on June 24, 2019. The Landlord also testified that they found the keys on the kitchen counter of the rental unit which would imply that the tenancy had ended, and the Tenants did not intend to return.

Based on the testimony of the Landlord, I find that they disposed of the mattress in accordance with the *Residential Tenancy Regulation* given that it was left behind at the end of the tenancy and was likely valued at less than \$500.00. I also accept the amount paid by the Landlord as shown on the invoice and therefore award the Landlord \$105.00 for the cost of disposing of the mattress.

The Landlord has also claimed liquidated damages in the amount of \$500.00.

Residential Tenancy Policy Guideline 4 provides clarification of liquidated damages with a definition in part as follows:

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

Upon review of the tenancy agreement, I find that the tenancy agreement outlines a liquidated damage clause which states that \$500.00 will be payable upon ending the fixed term tenancy early. I find that both parties signed the tenancy agreement and agreed to a fixed term set to end on July 31, 2019. Therefore, by moving out in June 2019, as also indicated on the Tenants' notice to end the tenancy, I find that the Tenants were in breach of the fixed term agreement and must pay the liquidated damages fee. I also do not find any evidence before me that would suggest that \$500.00 is a penalty and instead find this to be a reasonable pre-estimate of potential loss. Therefore, I award the Landlord the liquidated damages of \$500.00 as claimed.

Regarding the security deposit, as stated in Section 38(1) of the *Act*, a landlord has 15 days from the later date of when the tenancy ends or the date the forwarding address is provided in writing to return the deposit or file a claim against it. As stated in Section 39, a landlord may retain the deposits if a forwarding address is not provided within one year of the tenancy ending.

I accept the testimony of the Landlord that they did not receive a forwarding address from the Tenants. Although the Landlord obtained an address through the Tenants' Application for Dispute Resolution, I do not find this to be a method of providing a forwarding address. Instead, I find that the Landlord was not in receipt of the forwarding address from the Tenants and therefore the Landlord was not obligated to return the deposit within 15 days. As such, I find that the Landlord does not owe the Tenants

double the security deposit pursuant to Section 38(6) of the *Act*, and instead may retain the security deposit towards compensation owed.

As the Landlord was successful with their application, pursuant to Section 72 of the *Act* I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount outlined below:

Cleaning	\$125.00
Carpet cleaning	\$105.00
Mattress disposal	\$105.00
Liquidated damages	\$500.00
Filing fee	\$100.00
<i>Less security deposit</i>	<i>(\$800.00)</i>
Total owing to Landlord	\$135.00

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$135.00** as outlined above. 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 06, 2019

Residential Tenancy Branch