



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Vision Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the Agent), who provided affirmed testimony. Neither the Tenants nor an agent for the Tenants attended. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondents must be served with a copy of the Application and Notice of Hearing. As neither the Tenants nor an agent for the Tenants attended the hearing, I confirmed service of these documents as explained below.

The Agent testified that the documentary evidence before me and the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, were sent to each of the Tenants on September 25, 2020, by registered mail and provided me with the registered mail tracking numbers, which have been recorded on the cover page for this decision. Although the Agent stated that the Tenants did not provide them or the Landlord with a forwarding address in writing before or after the end of the tenancy, they know where the Tenants reside as the Tenants moved into another rental unit overseen by them as a property manager. The Agent provided me with this address, which has been recorded on the cover page for this decision, and stated that

this address was used to send the above noted registered mail. The Canada Post website confirms that the registered mail packages were sent on September 25, 2020, as described above and delivered on September 29, 2020. As a result, I find that the Tenants were served with the above noted documents in accordance with the Act and the Rules of Procedure on September 29, 2020.

Rule 7.3 of the Rules of Procedure states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. Based on the above, and as I verified that the hearing information contained in the Notice of Dispute Resolution Proceeding was correct, the hearing therefore proceeded as scheduled despite the absence of the Tenants or an agent acting on their behalf, pursuant to rule 7.3 of the Rules of Procedure.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be emailed to them at the email address provided in the Application.

Preliminary Matters

The Agent withdrew the portion of the Application relating to \$4,000.00 in garden restoration costs as they stated that the amount shown on the Application was only an estimate. The Agent stated that although the Landlord has since had the services completed, they did not have the information regarding the exact amount spent by the Landlord.

The Landlord remains at liberty to reapply for reimbursement of garden restoration costs, should they wish to do so. This is not an extension of any statutory time limit.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenants, their pets, or their guests to the unit, site, or property?

Is the Landlord entitled to recovery of the filing fee?

Is the Landlord entitled to retain any portion of the Tenants' security deposit?

Background and Evidence

The 20 month written tenancy agreement in the documentary evidence before me states that the fixed-term of the tenancy agreement commenced on November 1, 2017, and the Agent stated during the hearing that despite a move-out clause in the tenancy agreement, the tenancy agreement was amended and the tenancy therefore continued at the same monthly rental rate. The tenancy agreement states that rent in the amount of \$4,000.00 is due on the first day of each month, and that a security deposit in the amount of \$2,000.00 was paid, which the Agent confirmed during the hearing is still held by the Landlord in trust. The tenancy agreement also states that a 5 page addendum forms part of the tenancy agreement, a copy of which was submitted for my review and consideration.

The Agent stated that a move-in condition inspection and report were completed with the Tenants in compliance with the Act and regulations at the start of the tenancy. The Agent stated that the tenancy ended on August 31, 2020, and that a move-out condition inspection and report were completed with the Tenants on September 3, 2020, by mutual agreement. A copy of the condition inspection report was submitted for my review containing information about both the move-in and move-out condition inspections. The Agent stated that despite the Tenant's attendance at the move-out condition inspection, they refused to sign the move-out condition inspection report when it was presented to them at the end of the inspection and did not provide a forwarding address in writing.

The Agent stated that the Tenants did not leave the rental unit reasonably clean at the end of the tenancy as required, resulting in \$1,860.00 in cleaning and mould removal costs. The move-in and move-out condition inspection reports, a cleaning invoice, written submissions, and photographs of the rental unit at the start and end of the tenancy were submitted by the Agent in support of above noted claim amount.

No one appeared on behalf of the Tenants at the hearing to provide any evidence or testimony for my consideration, despite my finding earlier in this decision that the Tenants were served with a copy of the Application, notice of the hearing, and the documentary evidence before me from the Landlord, by registered mail on September 29, 2020.

Analysis

As there is no evidence before me to the contrary, I find as fact that the terms of the tenancy agreement are as set out by the Agent in the hearing and the tenancy agreement and associated addendums and amendments to the tenancy agreement in the documentary evidence before me. I also find as fact that that the tenancy ended on August 31, 2020, that the Tenants have not yet provided a forwarding address in writing and that move-in and move-out condition inspections were completed with the Tenants at the start and the end of the tenancy as required and that copies of these reports were provided to the Tenants as required by the Act and regulations.

Section 37 of the Act and Residential Tenancy Policy Guideline #1 state that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the uncontested documentary evidence and affirmed testimony before me from the Agent, I find that the Tenants failed to leave the rental unit reasonably clean at the end of the tenancy, resulting in \$1,860.00 in cleaning costs, and that the Landlord or their agents acted reasonably to minimize the damage or loss. As a result, I grant the Landlord's Application seeking recovery of \$1,860.00 in cleaning costs.

Having made this finding, I will now turn my mind to the matter of the Landlord's retention of the Tenants' security deposit. Based on the testimony of the Agent in the hearing and the condition inspection reports submitted, I am satisfied that neither party extinguished their rights in relation to the security deposit. As set out above, I am also satisfied that the Tenants have failed to provide a forwarding address in writing. As a result, I find that the requirements under section 38(1) of the Act have not yet been triggered, and that the Landlord was therefore entitled to retain the Tenants' security deposit, regardless of the date on which the Application was filed.

As the Landlord was successful in their Application, I award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. Pursuant to section 72(2)(b) of the Act, I also authorize the Landlord to retain \$1,960.00 from the Tenants' \$2,000.00

security deposit in recovery of the above noted amounts owed. As the Tenants have not provided a forwarding address in writing, and the requirement for the return of the security deposit under section 38(1) of the Act has therefore not been triggered, I have not ordered the return of the remaining \$40.00 balance of the security deposit to the Tenants. The remaining balance therefore must be dealt with by the Landlord in accordance with the Act.

Conclusion

The Landlord was successful in their Application and I therefore authorize them to retain \$1,960.00 of the Tenants' \$2,000.00 security deposit pursuant to section 72(2)(b) of the Act. The remaining balance of \$40.00 is to be dealt with by the Landlord in accordance with the Act, as the Tenants have not yet provided a forwarding address in writing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: January 8, 2021

Residential Tenancy Branch