



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devonshire Properties Inc and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCL-S, FFL

Introduction

This hearing was reconvened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms receipt of the Tenant’s evidence and confirms that no other evidence was provided by the Landlord after the adjourned hearing.

Issues

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on February 1, 2021 on a fixed term to end March 31, 2022. At the outset of the tenancy the Landlord collected \$965.00 as a security deposit. Rent of \$1,930.00 was payable on the first day of each month. On August 22, 2021 the Tenant gave notice to end the tenancy for

September 30, 2021. The Tenant moved out on September 30, 2021. The tenancy agreement provides for a rental incentive with the first month's rent free to be repayable upon a late rent payment. The Parties mutually conducted a move-in inspection with a copy of the inspection report given to the Tenant. The Parties mutually conducted a move-out inspection with a copy of the report given to the Tenant. The unit was re-rented under a separate agreement to another tenant for a start date of October 1, 2021 at the same rental rate as the Tenant.

The Landlord claims return of the one-month incentive in the amount of \$1,930.00. The Landlord confirms that the tenancy agreement does not require the repayment of the incentive amount upon a breach of the fixed term. The Landlord also claims at the hearing the liquidated damages amount equivalent to the security deposit for the Tenant having breached the fixed term. It is noted that the tenancy agreement does not set out any amount payable for liquidated damages. It is noted that the Landlord's application makes no claim for liquidated damages.

The Landlord states that the tenancy agreement requires the Tenant to have the drapes professionally cleaned at the end of the tenancy. The Landlord states that because the Tenant did not have them professionally cleaned the Landlord may claim the set costs of \$75.00. The Landlord did not provide a receipt for the cleaning cost claimed. The Landlord provides a copy of a document setting out this set cost that would be required. No photo of the drapes were provided and it is noted that no dirty drapes were indicated on the move-out report.

The Tenant states that the drapes were not dirty. The Landlord states that the Tenant agreed on the move-out report to pay the costs of \$75.00 for the drapes. It is noted that the Tenant signed both an agreement and disagreement with the report itself and that the Tenant did not sign their agreement to any amount being deducted from the security deposit, as provided for on the move-out report.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. As the tenancy agreement only requires the repayment of the incentive upon a late rent payment and as there is no evidence of any late rent payments I find that the Landlord is not entitled to return of the rental incentive for a breach of the fixed term. Further there is no evidence that the Landlord incurred any rental loss as a result of the breach of the fixed term. For these reasons I dismiss the claim for \$1,930.00.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. The Landlord did not amend its application to include a claim for liquidated damages. As there are no particulars for a claim to liquidated damages in the application and as there is no amendment to the Landlord's application to add this claim, I find that the Landlord may not make this claim at the hearing. Further, there is no amount of liquidated damages provided for in the tenancy agreement. For these reasons I find that the Landlord may not claim any amount as liquidated damages and I dismiss this claim.

Section 37 of the Act provides 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 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. As the tenancy agreement requires professional cleaning regardless of whether or not the drapes are left reasonably clean I find that the tenancy agreement term is inconsistent with the Act and therefore not enforceable. I dismiss the claim for the drape cleaning costs pursuant to the term of tenancy agreement.

Section 21 of the Regulations provides that a duly completed inspection report is evidence of the condition of the rental property, unless either the landlord or tenant has a preponderance of evidence to the contrary. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. The Tenant's evidence is that the drapes were not unclean. The move-out report does not include any note of dirty drapes. The Landlord did not provide any supporting evidence of unclean drapes such as a photo. The Landlord did not provide any receipt to support the cleaning cost claimed. For these reasons I find on a balance of probabilities that the Landlord has not substantiated the claimed amount of \$75.00 for drape cleaning. I therefore dismiss this claim.

As the Landlord's claims have not been successful, I find that the Landlord is not entitled to recovery of the filing fee I dismiss this claim and in effect the Landlord's application is dismissed in its entirety.

I order the Landlord to return the security deposit of **\$965.00** to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$965.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: January 10, 2023

Residential Tenancy Branch