



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUATERRA MANAGEMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application, as amended, for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The landlord was represented at the hearing; however, the tenant did not appear. The landlord submitted that the hearing package was sent to the tenant at his forwarding address on September 9, 2015 and that it was picked up on September 10, 2015. The landlord provided a copy of the registered mail receipt, including tracking number, as proof of service. The tenant's forwarding address appears on the move-out inspection report. I accepted that the tenant was served with the landlord's application and some of the landlord's evidence on September 10, 2015.

The landlord's additional documentary evidence was sent to the tenant using the same forwarding address on January 15, 2016 via registered mail but the registered mail was returned as unclaimed. The landlord's agent orally provided the registered mail tracking number during the hearing as proof of service. Section 90 of the Act deems a recipient to have received documents five days after mailing. Based upon the evidence before me, I accepted that the landlord served the tenant with the additional evidence in a manner that complies with the Act and the tenant is deemed have received the documents five days after mailing.

In light of the above, I continued to hear from the landlord without the tenant present and I have considered all of the documentary evidence provided by the landlord.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation as claimed against the tenant?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced March 1, 2015 for a fixed term set to expire on February 29, 2016. The tenant paid a security deposit of \$650.00 and was required to pay rent of \$1,300.00 on the first day of every month. The tenancy agreement provides for a liquidated damages clause that applies where the fixed term tenancy ends early. The tenant vacated the rental unit on August 31, 2015.

A move-in and move-out inspection was done by the parties together. The tenant indicated that he agreed with the landlord's assessment of the property on the condition inspection reports but did not authorize the landlord to make any deductions from the security deposit.

The landlord originally sought compensation of \$641.00 from the tenant based upon estimates but the landlord reduced the claim to reflect the actual costs; some of which were less than estimated. The landlord seeks compensation for the following items, as amended to the reduced amounts:

<u>Description</u>	<u>Amount</u>	<u>Reason</u>
Cleaning	\$36.00	2 hours of additional cleaning required to clean light fixtures and closet doors
Drapery cleaning	\$82.32	Drapery required cleaning
Carpet cleaning	\$57.75	Carpet required cleaning
Liquidated damages	\$400.00	As provided in clause 5 of the tenancy agreement for ending the fixed term early
Reversal of move-in bonus	\$50.00	As provided in clause 44 of the tenancy agreement the move-in bonus will be reversed where the tenant breaks lease
Total claim	\$626.07	

The landlord's documentary evidence included copies of: the tenancy agreement; the condition inspection reports; the tenant's notice to vacate and the landlord's written response; and invoices and receipts to support the amounts claimed.

Analysis

Upon consideration of all of the unopposed evidence presented to me, I provide the following findings and reasons with respect to the landlord's claims against the tenant.

Under section 37 of the Act, a tenant is required to leave a rental unit reasonably clean. I accept the landlord's unopposed evidence that the tenant did not leave the rental unit reasonably cleaned with respect to the items for which the landlord seeks cleaning costs.

Therefore, I award the landlord's request to recover the costs, as claimed, to perform additional cleaning.

The landlord also seeks liquidated damages against the tenant. Residential Tenancy Policy Guideline 4 provides information with respect to such claims. 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 fixed term by the tenant. If a liquidated damages clause is determined to be valid, the tenant must pay the stipulated sum unless the sum is found to be a penalty. Upon review of the liquidated damages clause, I find the amount payable under the clause to be a reasonable pre-estimate and is not a penalty. Therefore, I grant the landlord's request to recover liquidated damages of \$400.00 from the tenant.

With respect to the landlord's claim to recover the move-in bonus provided to the tenant at the start of the tenancy, I find the tenancy agreement sufficiently clear that the tenant agreed to repay this bonus should the tenant end the tenancy early and that this amount is in addition to liquidated damages. Therefore, I grant the landlord's request to recover the move-in bonus from the tenant.

I further award the landlord recovery of the \$50.00 filing fee paid for this application.

In light of all of the above, the landlord is awarded the total amount claimed, plus \$50.00 for the filing fee, for a total award of \$676.07. The landlord is authorized to retain the tenant's \$650.00 security deposit in partial satisfaction of this award and the landlord is provided a Monetary Order for the balance of \$26.07 to serve and enforce upon the tenant.

Conclusion

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$26.07 to serve and enforce upon the tenant.

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: March 29, 2016

Residential Tenancy Branch