



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC O

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlords to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, to keep the security and pet deposits, and for other reasons.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Procedural issues

During the course of this proceeding I was disconnected from the teleconference hearing at 9:39 a.m. I dialed back into the teleconference at 9:40 a.m., confirmed that both the Landlords and Tenants were still in attendance, and continued with the proceeding.

Issue(s) to be Decided

Should the Landlords be awarded monetary compensation?

Background and Evidence

The Landlords submitted documentary evidence which included, among other things, copies of: their written statement; a condition inspection report form dated November 1,

2012; invoices for cleaning the rental unit and carpet cleaning; an estimate for installation of carpet; a witness statement; photos of the rental unit; a mutual agreement to end tenancy effective October 31, 2012; and the Tenants' written forwarding address received on November 2, 2012.

The Tenants denied receiving the Landlords' evidence. The Landlords stated that each Tenant was sent the evidence package by registered mail on February 3, 2013. Canada Post tracking numbers (RW 691 178 979 CA and RW 691 178 965 CA) were provided in the Landlords' oral testimony.

After the Tenants heard the tracking information they stated that they have not picked up their mail from their post office box for about a week and a half because they were out of town at their cabin. At that time the Landlords checked the Canada Post website and advised that the tracking information indicated that each package of evidence was accepted at the post office on February 3, 2013 and successfully delivered on February 5, 2013.

The Tenants submitted documentary evidence which included, among other things, copies of: their written statement and a statement from a witness. The Tenants confirmed that they did not send copies of their evidence to the Landlords.

The following facts were discussed and agreed upon by both parties during this proceeding:

- The parties entered into a tenancy agreement that began on May 1, 2012;
- Rent was payable on the first of each month in the amount of \$850.00;
- On May 1, 2012 the Tenants paid a security deposit of \$425.00 and a pet deposit of \$425.00;
- The parties conducted a move-in inspection and signed a condition inspection form on approximately May 1, 2012;
- The parties signed a mutual agreement to end the tenancy effective October 31, 2012;
- The move-out inspection form was completed and signed by both parties on November 1, 2012.
- The Tenants did not return possession of the rental unit until November 1, 2012, at approximately 11:00 a.m.;
- The male Tenant returned to the rental property at approximately 1:00 p.m. on November 1, 2012 and removed possessions and garbage from the basement storage and the outside yard.

The Landlords are seeking an Order authorizing them to retain the \$850.00 deposits (\$425.00 security deposit + \$425.00 pet deposit) as full satisfaction for \$1,186.21 in damages as follows:

- 1) \$221.00 for professional carpet cleaning. The Tenants signed the move out inspection form agreeing to this charge being deducted from their security deposit, as per the tenancy addendum and carpet cleaning receipts provided in their evidence.
- 2) \$180.00 for cleaning the rental unit. The Landlords argued that the Tenants' did not move out by October 31, 2013 and did not complete the required cleaning. They vacated on November 1, 2013, just prior to the new tenants taking possession at 1:00 p.m. The new tenant who was awaiting to move in on November 1, 2012 had to finish the cleaning as supported by her statement, her invoice, and her move in condition report provided in the Landlord's evidence. The Landlord provided photos of the inside of the fridge and oven which were not cleaned and other areas of the rental unit showing garbage strewn around. The photos were taken at approximately 12:45 p.m. on November 1, 2012.
- 3) \$785.21 for removal and replacement of the bedroom carpet. The Landlords stated the carpet was brand new in February 2012, just three months before the Tenants' tenancy began. They argued that the bedroom carpet was soaked with dog urine which could not be rectified by professional cleaning. They spoke about their evidence which included the estimate for carpet installation and the written statement provided by the professional carpet cleaner indicating the urine could not be removed and that the carpet had to be replaced. They stated that the upstairs tenant informed them that they had seen up to four pit bull dogs in the rental unit at one time and also saw some small dogs.

The Tenants initially refused responsibility for all of the items claimed; however, they changed their testimony and confirmed they had previously agreed to allow the Landlords to deduct the carpet cleaning costs because they did not have time to have them cleaned.

The Tenants acknowledged that the move out report indicates they had agreed to finish cleaning the rental unit and stated that they did finish the cleaning before they left. They confirmed they left the rental unit at 11:00 a.m. and that the male Tenant returned to the rental unit just after 1:00 p.m. to remove items from the yard and the storage unit. K.N. stated that when he returned to the unit the Landlord was there talking with the new

tenants and she did not say anything to him about not cleaning the rental unit, taking pictures, or having another walk through.

The Tenants disputed the claim for carpet replacement and argued that the carpet had to be replaced because of a pre-existing blue stain. They stated that they owned one pit bull dog, not four, and they often would babysit their daughter's dog which looks like a pit bull. They also babysat their friend's small dogs but at no time did they have four pit bulls in the house. They advised that they had the carpet cleaned at the end of August 2012 because their dog urinated on the carpet once. There were no stains after they had cleaned the carpet. They do not believe the carpet had to be replaced because of urine and they argued that there was no mention of urine smell during their move out inspection.

In closing the Landlords re-stated that they were at the rental unit just before 11:00 a.m. on November 1, 2012, to conduct the inspection and left. Then they returned at 12:45 p.m. to take the pictures and turn possession of the unit over to their new tenants who arrived around 1:00 p.m. K.N returned just before 1:00 p.m. the Landlords said they opened the fridge and pointed out to K.N. that it was not cleaned. At that time he removed some items from the fridge and left. They confirmed there was a blue stain on the carpet; however that was not the cause to have the carpet replaced. They had attended the unit on September 6, 2012 for an inspection and at that time there were two pit bulls inside dog kennels in the bedroom. They were also told by the upstairs tenants that the Tenants were operating as a pit pull rescue in the rental unit.

The Tenants confirmed the two pit bulls were inside kennels in the bedroom on September 6, 2012. They informed the Landlords on the day of September 6, 2012 inspection that they had just had the carpets cleaned. They denied having rescue dogs at the rental unit but confirmed they operated a pit bull rescue where they fostered dogs at other homes.

Analysis

The Tenants confirmed that they did not provide the Landlords with copies of their evidence which is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Landlords have not been served copies of the Tenants' evidence I find that the Tenants' evidence cannot be considered in my decision. I did however consider the Tenants' testimony.

I favor the evidence of the Landlords, over the evidence of the Tenants, as the Landlords provided affirmed testimony and tracking information confirming that the evidence packages were delivered to the Tenants' forwarding address on February 5, 2013. I favored the evidence of the Landlords, in part, because the Landlords' evidence was forthright, credible, and supported by photographs, witness statements, and a statement from a carpet professional who states the bedroom carpet needs to be replaced.

In *Bray Holdings Ltd. V. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p. 174:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The Test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness is such a case must be its harmony with the preponderance of the probabilities of which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

I find that the Tenants' explanation that they were prevented from receiving the Landlord's evidence improbable given the circumstances before me. Rather, I find the foregoing to be an indication that the Tenants either received the evidence and are denying seeing it or simply ignored to pick up the evidence in an attempt to have the evidence excluded from my consideration so they could argue they cleaned the unit and argue the carpet did not have urine stains.

Furthermore, I find the Tenants' explanation that they cleaned the rental unit after the inspection to be improbable; given that the parties confirmed the initial inspection took place just before 11:00 a.m. on November 1, 2012; that the Tenants left the unit just after 11:00 a.m. and the Landlord returned at 12:45 p.m. to find the unit not cleaned as the fridge was pointed out to the male Tenant when he returned at 1:00 p.m.

After considering the circumstances presented to me, I find the Tenants could not have completed all of the required cleaning in such a short time period (between the times the Landlord left just prior to 11:00 a.m. and when the female Tenant left at 11:00 a.m.) I make this finding in part because the photographic evidence which displays the dirty condition of the inside of the fridge and oven displays a state that would take several hours to clean.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) 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.

Based on the above, I find the Tenants have breached sections 32(3) and 37(2) of the Act, leaving the rental unit: unclean; the carpets not professionally cleaned; and the bedroom carpet and underlay needing replacement as they were ruined by dog urine. Accordingly, I find the Landlords have met the burden of proof and I award them **\$850.00**.

Monetary Order – I find that the Landlords are entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security deposit plus interest as follows:

Cleaning, carpet cleaning and carpet replacement	\$850.00
LESS: Security + Pet Deposit \$850.00 + Interest \$0.0	<u>-850.00</u>
Offset amount due to the Landlord	NIL

Conclusion

The Landlords are HEREBY ORDERED to retain the **\$850.00** deposits (\$425.00 Security Deposit plus the \$425.00 Pet Deposit) as full satisfaction of their claim.

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: February 14, 2013

Residential Tenancy Branch

