



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing, the tenant C.B. questioned why her co-tenant, D.K., had not been added as a respondent. I advised that because the tenants together signed a single tenancy agreement, they were joint and severally liable, which meant that the landlord could pursue either or both of the tenants for any losses incurred during the tenancy. The landlord has chosen to pursue C.B. alone and it is his right to do so.

Issue to be Decided

Is the landlord entitled to a monetary award as claimed?
Should the landlord be permitted to retain the security deposit?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2012 and ended on May 31, 2013. They further agreed that at the outset of the tenancy, the tenants paid a \$525.00 security deposit. The parties agreed that at the beginning or the end of the tenancy, they did not inspect the rental unit together and produce a written report. The landlord claimed that his wife conducted an inspection and gave paperwork to the tenants to sign, but they did not sign or return the paperwork. At the end of the tenancy, the parties walked through the unit together to inspect it, but did not sign and complete paperwork while they were together. They agreed that the balcony was not inspected during the final walk through.

The landlord testified that after the tenants left the unit, his wife opened the door to the balcony and was immediately met with a foul odour. The balcony was covered with wooden decking. Upon inspection, the landlord discovered that a significant amount of

animal waste had fallen between the slats. The landlord testified that the odour was overpowering and that there was a significant amount of waste under the decking. The landlord provided a statement from J.M., who performed the initial cleaning in which he described a “slurry of urine and feces $\frac{3}{4}$ to 1” deep” under the decking. The landlord also provided a statement from the new tenants in which they stated that they were unable to stay the night in the unit on June 1 and 2 due to the offensive odour.

The landlord testified that he paid \$140.00 for 7 hours to cleaning the deck, which involved scrubbing the decking, removing the waste beneath and clearing the drain, which had become clogged.

The tenants testified that the previous tenants had pets and stated that they did not use the deck throughout the tenancy because of an offensive odour. When asked whether they reported this odour to the landlord, the tenants replied that they reported a malfunctioning refrigerator and a soiled carpet to the landlord, but did not report the problems with the deck and chose instead just to not use the deck during the tenancy. The tenants argued that because the landlord had not done proper inspections and obtained their signature on the condition inspection reports, they should not be held liable for any damage.

The landlord seeks an award for the following:

Initial Cleaning	\$140.00
Supplies for initial cleaning	\$20.00
Labour for tear down and rebuild	\$120.00
Deck materials	\$201.06
Roofing membrane	\$27.98
1 day loss of rent	\$35.00
Filing fee	\$50.00
Total:	\$594.04

Analysis

The landlord has an obligation under the Act not just to conduct an inspection of the unit at the beginning and end of the tenancy, but also to inspect the unit together with the tenant and to create a written record of that inspection. The landlord failed to completely meet his obligations and pursuant to sections 24(2) and 36(2) of the Act, the landlord has extinguished his right to claim against the security deposit.

Despite this extinguishment, there is nothing in the Act barring the landlord from making a claim for a monetary order.

Although the tenants argued that the previous tenants had pets and that the waste can be attributed to those pets, I find it highly unlikely that the tenants would encounter a foul odour on the balcony and simply choose not to use the balcony rather than report it to the landlord. The tenants had no hesitation about reporting other issues to the landlord and I find it likely that they would have reported an odour which prevented them from fully enjoying the rental unit. Further, because the previous tenancy had extended through the warm summer months, I find it likely that the odour would have been more pervasive during the summer and that it would have had a high probability of bothering neighbours who would have most certainly complained. For these reasons, I find it more likely than not that the tenants' pets were the source of the problem and I find that the tenants must be held liable for the resultant repairs.

I accept the landlord's claim as outlined above with the exception of the claim for \$20.00 for materials used in the initial cleanup. I disallow that part of the claim as the landlord had no documentation to support that charge. Although the landlord did not have documents to support his claim for his own labour, I accept his testimony that he spent a significant amount of time effecting the repairs. I therefore award the landlord \$574.04 which represents the following awards:

Initial Cleaning	\$140.00
Labour for tear down and rebuild	\$120.00
Deck materials	\$201.06
Roofing membrane	\$27.98
1 day loss of rent	\$35.00
Filing fee	\$50.00
Total:	\$574.04

Conclusion

Although the landlord has extinguished his right to make a claim against the security deposit, section 72(2) of the Act permits me to apply the security deposit to any award made to the landlord and I find it appropriate to do so in this circumstance.

The landlord has been awarded \$574.04. I order the landlord to retain the \$525.00 security deposit in partial satisfaction of the claim and I grant him a monetary order under section 67 for the balance of \$49.04. 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: September 24, 2013

Residential Tenancy Branch

