



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR GROVE COTTAGES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a Monetary Order: for damage to the unit, site or property; for money owed or compensation for damage or loss under the Residential Tenancy Act (referred to as the '*Act*'), regulation or tenancy agreement; to keep all or part of the pet damage or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlord served the tenant with a copy of the application, the Notice of Hearing documents and the evidence used in this hearing by registered mail. The Canada Post tracking receipt was provided as documentary evidence. Section 90 of the *Act* states that a document served by registered mail is deemed to have been received 5 days later. Based on this, I find the tenant was served the hearing documents as per the *Act*.

An agent for the landlord who is also the owner appeared for the hearing. There was no appearance for the tenant or any submission of documentary evidence prior to the hearing, despite being served notice of the hearing in accordance with the *Act*. The landlord's affirmed testimony and documentary evidence was carefully considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to compensation for damages to the rental unit?
- Is the landlord entitled to use the security deposit in full or partial satisfaction of the landlord's claim?

Background and Evidence

The landlord testified that the tenancy started on November 1, 2011 on a month to month basis and ended when the tenant left on May 31, 2013. A written tenancy

agreement was completed and the tenant paid a security deposit of \$400.00 on October 7, 2011 which the landlord still retains. The tenant was required to pay rent to the landlord on the first of every month in the amount of \$800.00 per month. The landlord completed a move-in condition inspection report at the start of the tenancy. The tenant provided the landlord with a forwarding address by e-mail on July 13, 2013.

The landlord provided the written tenancy agreement as evidence which was signed by the tenant and contained an addendum detailing additional terms which the tenant and landlord agreed to and signed. Two of these additional terms included "No pets" and "No smoking in the suite".

The landlord testified that during the latter part of the tenancy she became aware that the tenant had a number of ferrets in the unit as she had seen them on a visit to the rental suite. The landlord has also known about the tenant smoking in the unit based on complaints from neighbouring units. The landlord testified that she verbally warned the tenant about this on a number of occasions and reminded the tenant of the additional terms she had agreed to. However, the tenant did not heed the warnings but decided to move out before the landlord had chance to take formal action.

The landlord testified that on inspection of the rental unit after the tenant had left she discovered that there was a strong smell of animal urine and cigarette smoke from within all the rooms of the suite which had permeated the suite walls and floors causing damage.

As a result, the landlord testified that she called a professional painting and cleaning company who provided her with quotes to correct the problems. The quotes were provided as evidence for the hearing. The quote for re-painting shows that the painting was required due to ferret urine, smoke smell and nicotine covered walls. The quote goes on to say that 2-3 coats of paint will be required at a cost of \$2,500.00. The landlord also produced a quote of \$330.00 plus tax for the cleaning of the unit which involved washing the walls, floors and kitchen cupboards due to the presence of heavy smoke. The total amount the landlord would have had to spend to rectify the damages was \$2,830.00

However, the landlord decided to mitigate these losses by completing the work herself with her husband. As a result, the landlord claims the following amounts to rectify the damages to the unit created by the tenant:

- \$120.00 for painting and cleaning supplies. The landlord provided receipts for paint, painting materials and degreasing agents in the amount of \$105.05 and a trigger sprayer to paint the walls in the amount of \$15.82.
- \$200.00 for labour costs associated with painting of the unit. The landlord testified that it took her a total of 8 hours for which she charged \$25.00 per hour to paint the walls and ceilings. The landlord testified that it took 3 coats of paint in order to get rid of the cigarette smell.
- \$280.00 for labour costs for getting rid of the animal urine. The landlord testified that the rental unit had to be thoroughly scrubbed and areas of the laminate flooring and baseboards where the ferret cages were housed by the tenant had to be lifted and treated underneath by her husband who is a carpenter to get rid of the smell. This amount relates to 8 hours of total work at a cost of \$35.00 per hour.

In support of the landlord's claim, the landlord provided e-mails from the tenant who moved in after the tenant for this application had left indicating a strong presence of cigarette smoke and urine smells. In addition one of the professional companies who provided a quote for the cleaning also provided a report which states that the animal urine had soaked into the walls and needed special paint to rectify the damage.

The landlord provided a copy of the move-in condition inspection report which indicated no presence of cigarette smoke or animal urine damage at the start of the tenancy.

The landlord also provided photographs of the work being done to lift up and replace the flooring for the damage caused by the animal urine and the landlord doing painting as it was not possible to provide a visual representation of the smells within the unit.

Analysis

The tenant failed to appear for the hearing and did not provide any evidence in advance of this hearing. As a result, I have completed the following analysis of the landlord's claim in the absence of any evidence from the tenant to dispute the evidence and base my reasons on the landlord's affirmed testimony and documentary evidence provided.

Based on the landlord's testimony regarding the cigarette smoke and urine damage, I am satisfied that the damage was in existence. This is further supported by the quotes obtained by the landlord to rectify these damages which detail how the cigarette smoke and animal urine had permeated the walls and floors of the rental unit and the measures that were required to rectify this damage.

I am also satisfied that the tenant caused these damages on the balance of probabilities. This is based on the undisputed testimony of the landlord, the move-in condition inspection report which shows no signs of such damage at the start of the tenancy and documentary evidence from the incoming tenant who confirms the damage to the rental suite at the start of their tenancy.

I accept the landlord's monetary claim as I find that the landlord mitigated her losses by keeping expenses to a minimum of \$600.00 as opposed to \$2,830.00 which the landlord would have claimed had she got professional companies to carry out the work. I also accept the amount of hours the landlord spent on bringing the rental unit back to a satisfactory standard for re-rental as this is in line with the level of work that was detailed in the quotes provided by the professional companies and the photographs provided as evidence showing the landlord and her husband carrying out the work.

As a result, I award the landlord's claim in full in the amount of \$600.00. As the landlord has been successful in this matter, the landlord is entitled to recover from the tenant the \$50.00 filing fee for the cost of this application pursuant to Section 72 of the *Act*.

Therefore, the total amount payable by the tenant to the landlord is \$650.00. As the landlord already holds a \$400.00 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the *Act*. As a result, the landlord is awarded \$250.00.

Conclusion

For the reasons set out above, I grant the landlord monetary compensation pursuant to Section 67 of the *Residential Tenancy Act* in the amount of **\$250.00**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: October 28, 2013

Residential Tenancy Branch

