



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

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

At the outset of the hearing the landlord's agent withdrew the landlords claim for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The tenants and landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord permitted to keep all or part of the tenants' security and pet deposits?

Background and Evidence

The parties agree that this tenancy started on September 01, 2010 and was renewed each year for a further fixed term tenancy until September 01, 2013 after which the tenancy continued on a month to month basis. Rent for this unit was \$2,095.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of \$1,047.50 and a pet deposit of \$1,047.50 on August 04, 2010. Both parties attended a move in and a move out condition inspection of the unit and the tenants provided a forwarding address on the last day of the tenancy of October 31, 2013.

The landlord's agent testifies that at the end of the tenancy it was identified on the move out condition inspection report that the tenants had not cleaned the sheer drapes as required under their tenancy agreement. The landlord had the drapes cleaned and has provided a receipt for this work of \$21.00.

The landlord testifies that the tenants had not fully cleaned the unit and some touch up cleaning was required which took four hours at \$30.00 per hour to a total amount of \$126.00. The landlord has provided a receipt for this work.

The landlord's agent testifies that the tenants were responsible for yard work. However at the move out inspection it was identified that the tenants had not cleared up the leaves. The landlord had this work done and seeks to recover \$98.70 from the tenants. The landlord has provided a receipt in evidence for this work.

The landlord testifies that the move out inspection also identified some damage to the flooring. The report notes scratches on the flooring and there was also an area of further

scratches in the living room. The landlord's agent agrees that the flooring is nine years old and so the landlord has taken into account depreciation of the flooring and reduced their claim accordingly. The landlord's agent testifies that they had a quote for the refinishing of the flooring. This work will include removing and replacing the baseboards, corner pieces and transitions and refinishing the floor. The landlord has provided a copy of the quote from a flooring company in evidence. This quote is for \$3,495.56. The landlord seeks to recover \$1,849.30 as the flooring has a useful life of 25 years.

The landlord seeks an Order to keep the security and pet deposits in satisfaction of their claim for \$2,095.00.

The tenants do not dispute the landlords claim for cleaning the drapes of \$21.00.

The tenants do however dispute the landlords claim for cleaning the unit. The tenants testify that the unit was professionally cleaned before they moved out including the carpets. The tenants refer to their receipts provided in evidence from the cleaning companies used by the tenants. The tenants also refer to their photographic evidence showing how clean the unit was left. The tenants dispute the landlord's comments on the move out inspection that state that the unit was dirty. The tenants also dispute the validity of some of the landlord's photographic evidence and testify that at least one of the landlords close up photographs does not show the tenants unit. The tenants refer to the photograph showing some coat hooks and testify that these coat hooks were not in their unit. The tenants testify that at the move out inspection the landlord's agent informed the tenants that the landlord's cleaners would charge for a minimum of four hours even if they did less hours work. The tenants testify that the unit was not clean at the start of their tenancy.

The tenants dispute the landlords claim for yard work. The tenants testify that they had a time set to do the move out inspection however the landlord's agent kept changing the time and then asked to do the inspection earlier than originally arranged. The tenant AH testifies that he therefore did not have time to rake the leaves. The tenant testifies that

he arranged with the landlord's agent to return and do this the next day and sent the landlord's agent an email and photographs showing that the tenant did return and do this work. This documentation has been provided in evidence by the tenants. The tenant testifies that this was the autumn so the leaves were falling all the time. The landlord engaged a man to clean the leaves up again after the tenants moved out and his invoice is dated November 15, 2013.

The tenants testify that the flooring throughout the unit had scratches on it when the tenants moved in. The flooring was nine years old and would have been subjected to wear and tear in that time. The tenants agree that one of the felt pads had come off the leg of their couch which did result in some scratches over a small area of less than one square foot. The tenants dispute the landlords claim that the tenants are responsible to have the entire floor refinished. The tenants refer to e-mail correspondence from the landlord who states the cost for the flooring was \$786.24 and that the damage was based on an area of 54 square feet. The landlord now expects the tenants to pay for all damage to the flooring. The tenants testify that there are some boxes, in the basement of the unit, of flooring left over from when the floor was laid. These boards could have been used to replace the area damaged by the tenants' couch.

The tenants dispute the landlords claim to keep the security and pet deposit with the exception of the blinds.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for cleaning of the drapes; the tenants do not dispute that landlords claim for \$21.00 therefore I find in favour of this section of the landlords claim.

With regard to the landlords claim for cleaning the unit; Under the *Act* a tenant is responsible to maintain "reasonable health, cleanliness and sanitary standards"

throughout the premises. Therefore the landlord might be required to do extra cleaning to bring the premises to the high standard that they would want for a new tenant. The landlord is not entitled to charge the former tenants for the extra cleaning. In this case it is my decision that the landlords have not shown that the tenants failed to meet the "reasonable" standard of cleanliness required. Consequently the landlords claim for cleaning is dismissed.

With regard to the landlords claim for cleaning up fallen leaves. I find the tenants testimony and documentary evidence is more credible then that of the landlords. The tenants did vacate the unit at the end of October and as leaves will continue to fall during this season the landlord must expect more fallen leaves after the tenants have vacated the unit. The tenant AH did return to clear the fallen leaves the day after the tenancy ended and the landlord has provided no evidence to show that the man cleared the leaves between the time the tenants vacated and the next day when the tenant returned to do the work. Consequently this section of the landlords claim is dismissed.

With regard to the landlords claim for refinishing the flooring; I am not satisfied from the evidence presented that the tenants are responsible for damage to the flooring throughout the unit. The tenants agree that their couch did cause some scratching over a small area; however, due to the age of the floor I find it would be likely that the floor suffered some other minor scratches over the course of its life and it would be unreasonable for the landlord to expect the tenants to pay to have the entire flooring refinished. I therefore find the tenants are only responsible for the area of damage under the couch and consequently I must limit the landlords claim to \$100.00 to sand and refinish this small area of damage.

With regard to the landlord claim for an Order to keep the security and pet deposit; I find the landlord is entitled to keep **\$121.00** from the tenants' security deposit.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlord is entitled to keep \$121.00 from the security deposit. The balance of the security and pet deposits must be returned to the tenants and a Monetary Order has been issued to the tenants for the amount of **\$1,974.00** pursuant to s. 38(6)(b) of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial Court as an order of that Court.

As the landlord has only been marginally successful with their claim I find the landlord must bear the cost of filing this application.

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 03, 2014

Residential Tenancy Branch

