



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Abougoush Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, MND, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause and an Order of Possession because the tenants breached an agreement with the landlord; 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 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.

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

At the outset of the hearing the landlord advised that the tenants are no longer residing in the rental unit, and therefore, the landlord withdraws the applications for an Order of Possession.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on July 01, 2013 for a fixed term tenancy that was due to expire on June 30, 2014. Rent for this unit was \$975.00 per month and was due on the 1st of each month. The tenants paid a security deposit which carried over from a previous tenancy of \$595.00 on May 29, 2012.

The landlord testifies that at a previous hearing held on December 09, 2013 an agreement was put in place between the landlord and tenants. Part of this agreement was that the tenants asked in writing for permission to keep a pet and to pay a pet deposit. The tenants breached this agreement and the landlords issued the tenants with another One Month Notice to End Tenancy for cause. The tenants filed an application and a hearing took place on March 06, 2014. The tenants did not appear at that hearing and the tenants application was dismissed without leave to reapply. The tenants vacated the rental unit on January 25, 2014.

The landlord testifies that a date was given to the tenants to complete the move out condition inspection of the unit however the tenants informed the landlord that they were not able to attend at that time and a alternative date and time was given on January 28, 2014. The tenants did not attend and a final opportunity for inspection notice was posted on the tenants door as no forwarding address had been provided and the tenants legally had possession of the unit until January 31, 2014. The tenants had

moved out without informing the landlord. The inspection was completed in the tenants' absence.

The landlord testifies that during the inspection it was noted that many areas of the unit were dirty. The carpets were stained and had not been cleaned. There was also a large amount of dog hair on the carpet. The landlords had a professionally carpet cleaner out to do this work which entailed first removing pet hair the carpets then disinfecting the carpets due to pet urine and soiling in order to remove the smell from the unit. The carpets were then professionally cleaned. The landlord has provided a copy of the invoice in evidence and seeks to recover the amounts of \$112.00 and \$39.95 for this work.

The landlord testifies that the tenants had left the blinds in a dirty condition and the living room blind was caked with dog hair. The blinds had to be professionally cleaned. The landlord has provided a copy of the invoice in evidence and seeks to recover \$113.00 for this work.

The landlord testifies that when tenants move into a unit the drains are all professionally cleaned to ensure blockages do not occur. At the end of the tenancy the tenants are informed that there will be a charge of \$20.00 for this work. The landlord seeks to recover this from the tenants.

The landlord testifies that the walls of the unit were left damaged with many holes. The tenants had hung pictures on 22 walls without the landlord's prior consent as indicated in the addendum to the tenancy agreement. The walls had to be washed, repaired, primed and repainted. This unit was last repainted just prior to this tenancy commencing in July, 2013. The landlord has provided the invoice for this work and seeks to recover \$300.00 from the tenants.

The landlord testifies that the tenants let their dog urinate on the deck. This would wash down onto the deck in the unit below causing hardship and hygiene issues to those

tenants living there and damage to their property. The landlord testifies that they received written complaints from the tenants below concerning this matter and this documentation has been included in the landlord's evidence. At the end of the tenancy the landlord found the tenants deck to be stained with urine and dog hair. The landlord had to scrub the deck and the deck below. The landlord testifies that the entire unit was not cleaned sufficiently. There were many areas left dirty as indicated on the move out inspection and as evidenced in the landlord's photographs. The landlord testifies that there was dog hair everywhere. The landlord testifies that she had to clean the unit and spent around 24 hours in total doing this work. The landlord seeks to recover \$720.00 for cleaning a detailed cleaning invoice has been provided in evidence.

The landlord testifies that due to the condition the unit was left in the landlord could not re-rent the unit for February 01, 2014. The unit was cleaned and repaired and was re-rented for March 01, 2014. The landlord seeks to recover a loss of rent for February of \$975.00. The landlords withdraw the remainder of their claim for a loss of rent for the remainder of the term of the tenancy as the unit was re-rented the following month.

The landlord requests an Order to keep the security deposit in partial satisfaction of their claim. The landlord also seeks to recover the \$100.00 filing fee from the tenants.

The tenants dispute the landlords claim. The tenants testify that the landlord posted a 24 hour notice for inspection but after discussions with the tenant agreed to change the date and time to January 29, 2014 at 3.00 p.m. When the tenants went to the unit they found the landlord had completed the inspection at 9.00 a.m.

The tenants agree that they did not have the carpets shampooed or steam cleaned at the end of the tenancy but testify that they had vacuumed the carpets. The tenants also agree that they had a dog in the unit. The tenants agree that they did not have the blinds cleaned. The tenants testify that the landlord did not give the tenants sufficient time and was forcing inspections upon the tenants. The tenants do not dispute the landlords claim for \$20.00 for cleaning the drains.

The tenants agree that they did hang pictures on the walls but testify that the landlord is embellishing how many pictures were hung. The tenants do agree that they did not get written prior permission from the landlord to hang anything on the walls and testify that as they had moved from another unit and had not hung pictures there the landlord did not say they could not hang pictures in this unit.

The tenants dispute the landlords claim for cleaning. The tenants testify that they cleaned the unit before moving out and some of the landlords pictures are not even of the tenants unit. The tenants testify that they used condo grass on the deck for their dog to use and dog urine did not drip over onto the deck below. The deck below hangs put over four feet and rain will get onto that deck.

The tenants dispute the landlords claim for a loss of rent for February, 2014. The tenants testify that the landlord was evicting the tenants and so they were forced to move out. The tenants testify that they dispute the landlords claim that the unit could not be re-rented for February 01, 2014 due to cleaning and damage as they tenants did clean the unit prior to moving.

The landlord testifies that all the photographs provided in evidence are of the tenants unit.

The tenants testify that they have provided photographic evidence for this hearing. The landlord agrees they received the tenants' photographic evidence. However there is insufficient evidence that the tenants provided photographs or any other documentary evidence to this office for this application.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for damage to the unit, site or property; I

have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Having reviewed the documentary evidence before me I am satisfied that the tenants failed to leave the rental unit in a reasonably clean condition as required under s. 32 of the *Act*. The tenants left areas of the unit dirty and stained and the landlord's corroborating evidence supports this. There is no supporting evidence from the tenants to show that the landlord's photographic evidence is not of the tenants unit. I find the landlord also met their obligations under s. 35(2) of the *Act*, with regard to providing at least two opportunities for the tenants to attend a move out condition inspection.

The tenants are also required to shampoo or steam clean carpets where they have a pet that is not caged or if the carpets are left stained and the tenants do not dispute that they failed to do so. The tenants also agree that they failed to have the blinds cleaned and I am satisfied from the evidence before me that the blinds required cleaning.

Furthermore I find the tenants did not repair the excessive amount of holes left in the walls. The tenants do not dispute the landlords claim for \$20.00 for cleaning the drains.

I find the landlord has met the burden of proof regarding the actual costs incurred to remedy these issues. I therefore uphold the landlords claim for the following items:

Carpet cleaning - \$151.95

Blind cleaning – 113.00

Drain cleaning-\$20.00

Repairs to the walls - \$300.00

Cleaning inside the unit and the two decks - \$720.00

With regard to the landlords claim to recover a loss of rental income for February; I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that Even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

I am therefore satisfied that the landlord had to complete some remedial work in this unit to bring it back up to a reasonable standard to be re-rented. I therefore uphold the landlords claim to recover a loss of rent for February, 2014 of \$975.00.

I Order the landlord to keep the tenants security deposit of \$595.00 in partial satisfaction of their claim pursuant to s. 38(4)(b) of the *Act*.

I find the landlord is also entitled to recover the \$100.00 filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Cleaning	\$720.00
Damages	\$300.00

Carpets and blinds cleaning	\$264.95
Drains	\$20.00
Loss of rent	\$975.00
Filing fee	\$100.00
Less security deposit	(-\$595.00)
Total amount due to the landlord	\$1,784.95

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,785.95**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court 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: March 12, 2014

Residential Tenancy Branch

