



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westhall Properties Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, 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 in partial satisfaction of the claim. The tenants have filed an application seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and an order to have their security deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence and Analysis

The tenancy began on September 9, 2013 and ended on April 25, 2014. The tenants were obligated to pay \$2300.00 per month in rent in advance and at the outset of the tenancy the tenants paid \$1150.00 security deposit. Condition inspection reports were conducted at move in and move out.

I address the landlord's claims and my findings around each as follows.

Landlords First Claim – The landlord seeks \$800.00 for liquidated damages as per the tenancy agreement if the tenants “break the lease”. One of the tenants signed off on that cost at the move out inspection and is not in dispute for this hearing. I find that the landlord is entitled to \$800.00.

Landlords Second Claim – The landlord is seeking \$99.75 for pest control that he states the tenants were responsible for that cost. As in the previous claim one of the tenants signed off at the condition inspection at move out and is not in dispute for this hearing. I find that the landlord is entitled to \$99.75.

Landlords Third Claim – The landlord is seeking \$200.00 for deck cleaning and \$400.00 for suite cleaning. The tenant disputes this amount. The tenant stated that at the start of the

tenancy a notation was made for cleaning however it was limited to the fireplace and the carpet in one bedroom. The tenant stated the unit was cleaned at move out. The landlord stated that the unit was not cleaned and that the actual cost to clean the unit was far more than what was requested at today's hearing. The landlord submitted receipts to support his claim. The landlord also stated that the tenant did indicate on the move out inspection form that he agreed the report fairly depicted the unit but was in disagreement of the costs to clean the unit. Upon reviewing the move in condition inspection versus the move out report I am satisfied that the landlord has provided sufficient evidence to support this claim and award the landlord \$600.00.

I now address the tenants' claims and my findings as follows.

Tenants First Claim – The tenant is seeking \$200.00 x 4 months = \$800.00 compensation for having to live with a rat problem. The tenant stated that the issue was ongoing and that the landlord did not address it until a final demand letter of March 17, 2014 was issued. The landlord stated he addressed the issue as soon as the tenants brought it to his attention. The landlord stated that the tenants arranged inspections with the company directly and failed to attend those appointments on two occasions hence the agreed cost in the landlords claim for pest control. Based on all of the above the insufficient evidence before me, I must dismiss this claim.

Tenants Second Claim – The tenants stated that they are seeking \$810.00 as compensation for a plugged drain in the mud room that flooded the basement continuously, \$1000.00 compensation for loss of use of the basement bathroom not having a shower head, a sink that didn't work and mold growth and \$500.00 for the lack of carpet in the laundry room. The tenants stated that all of these issues were ongoing and multiple phone calls and person to person complaints were made to the landlord to address it. The tenants stated that the landlord ignored their requests until the repair demand letter of March 17, 2014 was given to the landlord. The tenants stated by that point they had already had enough of the deficiencies and wished to move out and move on.

The landlord disputes this claim in its entirety. The landlord stated that the March 17, 2014 letter was the first he had heard of any of these problems. The landlord stated that the unit had been renovated, including the bathroom. The landlord stated that the unit was in "A 1 condition". The landlord stated that the tenants made all of these false claims to get out of their lease as they had all concluded studies at SFU on March 25, 2014. The landlord stated that this was a very apparent attempt to "walk away" from the contract and mitigate the costs to clean and repair the unit. The landlord stated that most of these issues were addressed within a week of him being notified. The landlord agreed that the carpet was removed from the laundry room but it did not prevent the tenants from having full access to the laundry facility.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenants have not satisfied me of all four grounds as required, specifically ground #4. The only documentation the tenants provided to support this claim was dated March 17, 2014. The tenants moved out ten days later. The tenants stated that this was an issue for such an extended period, yet no written letters of complaint were made.

Based on all of the testimony and evidence before me and on the balance of probabilities, I dismiss this claim in its entirety.

Conclusion

The tenants' application is dismissed in its entirety.

The landlord has established a claim for \$1499.75. The landlord is also entitled to the recovery of the filing fee of \$50.00 for a total award of \$1549.75. I order that the landlord retain \$1150.00 from the deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$399.75. This order may be filed in the Small Claims 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: July 31, 2014

Residential Tenancy Branch

