



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLUMBIA PROPERTY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF
CNR, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Tenant and the Landlord.

The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent; to keep the Tenant’s security deposit; for money owed or compensation for loss under the *Residential Tenancy Act* (the “Act”); and to recover the filing fee. The Landlord also amended her Application to increase the monetary claim and include damages to the rental unit and unpaid utilities.

The Tenant applied to cancel the notice to end tenancy for unpaid rent; for the return of the security deposit; for money owed or compensation for loss under the Act; for the cost of emergency repairs; and to recover the filing fee.

An agent for the Landlord (the “Landlord”), the property manager and the Tenant appeared for the hearing. No issues in relation to the service of the Applications, the Landlord’s amended Application and the documentary evidence of both parties were raised.

The parties explained that the Tenant had vacated the rental suite on September 18, 2014 and therefore there was no requirement for me to make a determination on the Landlord’s Application for an Order of Possession and the Tenant’s Application to cancel the notice to end tenancy which are hereby dismissed.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

While both parties submitted a large amount of documentary evidence, I only refer to the relevant facts and issues in this decision.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for unpaid rent and utilities, lost rent and damages to the rental suite?
- Is the Tenant entitled to monetary compensation for a reduction in the value of the tenancy?
- Is the Landlord or Tenant entitled to the security deposit?

Background and Evidence

Both parties agreed that this tenancy started on July 1, 2014, although the Tenant did not move into the suite until July 3, 2014. A written tenancy agreement was completed for a fixed term tenancy of one year and monthly rent was established in the amount of \$1,525.00 payable on the first day of each month. The parties confirmed that the Tenant had paid a security deposit in the amount of \$750.00 just before the tenancy began. A pet damages deposit was requested but this was not paid.

The Landlord explained that a move in Condition Inspection Report (the "CIR") was completed on the morning of July 3, 2014 which was the scheduled date and time; however the Tenant failed to appear in the morning and therefore the Landlord completed the report in the absence of the Tenant. When the Tenant arrived later in the evening, the Tenant was provided a copy of the report and was asked to examine the rental suite on her own and make any necessary changes to the CIR. However, the Tenant did not do this and signed the report before going into the unit.

The Landlord testified that the parties had completed a move out condition inspection together but the Tenant left half way through and did not sign the move out CIR. The CIR was provided in written evidence by the Landlord.

The Tenant's testimony is summarised as follows:

- The rental suite was filthy. The carpets were stained with rodent urine and infested for rodent faeces, the walls needed washing from dirt and oil stains in the kitchen, the kitchen cupboards were dirty, the bathrooms were dirty with hair around the toilet bowls, the air conditioning was not working, there was an extensive amount of silicon repairs that were required, the front door knob was

falling apart, the oven and stove had not been cleaned, the baseboards had been gnawed at and the paint used to paint over the damaged baseboard was peeling off. Photographic evidence was provided to support this oral and written evidence.

- The Landlord was e-mailed on the next day about the lack of cleaning of the rental suite and that a patio screen was missing and another damaged.
- The Tenant noticed evidence of rodent activity as evidenced by mouse droppings and urine which had soiled the carpets and the kitchen cupboards. The Tenant placed flour in the cupboards and on the floor to detect the activity of the rodents and discovered rodent track marks.
- On July 11, 2014 the Tenant e-mailed the Landlord and explained the rodent activity and her evidence relating to it and the Landlord replied stating they would look into the matter.
- Due to the extent of the problem the Tenant left the rental suite on July 14, 2014 and explained to the Landlord that she would be back in a week's time requesting that the unit be cleaned, fixed and treated in the interim period.
- The Tenant took occupancy in various hotels as well as residence in her parents' home which was close to her work. The Tenant provided hotel receipts relating to the period of days she incurred costs.
- When the Tenant returned on July 24, 2014, the Landlord had treated the rental unit and had completed another clean of the rental suite.
- The Tenant was still not satisfied with the level of cleanliness and had a meeting with the Landlord on July 28, 2014 explaining her concerns about the cleanliness of the rental unit.
- The Tenant felt that she could no longer reside in the unit for the fear of having rodents in her rental suite and the potential exposure and danger of chewed electrical cables to her children and pets.
- As a result, the Tenant began looking for another rental unit and was able to secure a new tenancy for August 24, 2014. However, the Tenant had to move out her belongings slowly as she could not afford a moving company and did not fully vacate the rental suite until September 18, 2014.
- The Tenant did not pay any rent for the duration of the tenancy as she put stop payments on her rent cheques due to the problems associated with the tenancy.

The Tenant provided various hotel receipts relating to five total nights of stay for an amount of \$1,016.79. The Tenant also provided various receipts relating to restaurant meals which she had to purchase for July, 2014 for a total amount of \$323.00.

The Tenant testified that she cleaned the unit herself with a friend and had to purchase a special cleaner for \$67.00 to remove the rodent urine and faces and claims an arbitrary amount of \$420.00 for eight hours of cleaning the suite which includes various receipts showing the purchase of cleaning products.

The Tenant also claims from the Landlord, \$1,500.00 for moving costs and provided an estimate for this amount from a moving company which was the cost she would have had to pay to vacate the rental unit. However, the Tenant submitted that she did not have these funds and therefore completed the move by herself which is the reason why it took so long and was delayed.

The Landlord testified to the following summary of the evidence:

- The Tenant was e-mailed on the same day and informed that some of the cleaning and damages referred to by the Tenant such as picture holes in the wall and paint chips on the doors were natural wear and tear which was noted on the move in CIR and that she needed more information regarding the silicone repairs and what further cleaning was required.
- On July 11, 2014, the Landlord hired a pest control company to treat the rental suite. Two treatments were conducted of the rental suite where it was discovered that there was a rodent problem. The Landlord submits that the rodent problem may have been caused by food and material in the Tenant's couch.
- The strata management also completed external extermination to curtail a potential problem which may be emanating from outside of the rental suite.
- The Landlord also sent in cleaners to the rental suite on July 14 where the Tenant hindered entry and again on July 23, 2014 when the rental suite was cleaned to a reasonable standard.
- The rental suite was also cleaned prior to the Tenant moving in and an invoice of the cleaning was provided to support this submission.
- The Landlord hired a company to repair the patio screen.
- The Tenant was not completely satisfied with the level of cleaning and indicated in an e-mail that she was thinking about leaving the tenancy. However, in an e-mail dated August 1, 2014, the Tenant wrote to the Landlord explaining that she wanted to continue the tenancy as it was rodent free and that she would take good care of the property and would be paying her August, 2014 rent.
- The August, 2014 cheque came back as dishonoured and as a result, the Tenant was served with a notice to end tenancy for unpaid rent, which was provided in written evidence. The Tenant was also served with a previous notice to end tenancy in July, 2014 for nonpayment of rent for July, 2014.

- The Landlord provided photographic evidence of the condition of the rental unit at the end of the tenancy. These were taken on October 7, 2014.
- The Landlord pointed to an e-mail dated July 17, 2014 where the Tenant indicates that she is not at the rental suite because she is dealing with legal matters. The Landlord submits that they should not be responsible for paying hotel costs for personal business the Tenant was conducting.

The Landlord's monetary claim seeks to recover unpaid rent for the months of July and August as well as lost rent for September, 2014 as the Tenant did not leave the rental suite until September 18, 2014 when it was too late to re-rent the suite for the September, 2014 period. The Landlord testified that the owners have decided not to re-rent it out based on their experience with the Tenant. As a result, the Landlord claims \$4,575.00 in unpaid rent and \$75.00 relating to three late rent payments and insufficient funds fees as required by Section B in the addendum to the tenancy agreement provided in written evidence.

The Landlord also claims \$299.25 for the cleaning of the carpets as the Tenant did not clean them at the end of the tenancy, \$67.50 for the cleaning of the suite, \$20.00 for two broken vent covers and \$45.00 for a broken blind twist rod.

The Landlord testified that as part of the tenancy agreement the Tenant was required to put utilities in her name which she did not do, and these utility payments are now outstanding. However, the Landlord did not have the utility bills available at the time of this hearing. The Tenant denied the damages claimed by the Landlord and explained that she had paid her utility bills.

Analysis

The parties were given an opportunity to settle the matter by mutual agreement without taking into consideration the evidence and submissions made during the hearing. However, the parties were unable to reach agreement and therefore I make the following findings based on the facts and evidence in this case.

The Landlord made her Application to keep the Tenant's security deposit which was served to the Tenant before she vacated the rental suite. Therefore, the issue of whether the Landlord applied to keep the Tenant's security deposit within the time limits imposed by Section 38(1) of the Act is now a moot point, and I consider the parties' request to deal with the security deposit accordingly in this decision.

I am unable to order the Tenant to pay a pet damage deposit as the tenancy as now ended and this matter should have been more appropriately dealt with by the Landlord using the remedies available under the Act during the tenancy.

The Landlord was unable to confirm the Tenant's claim that the utilities had been paid as the utility bills were not available at the time of the hearing. Therefore, it is my finding that the Landlord be given leave to re-apply for unpaid utilities after acquiring the necessary evidence to prove or disprove the Tenant's claim.

I firstly make a determination on the Landlord's Application. Section 26(1) of the Act states that a Tenant is required to pay rent when it is due under a tenancy agreement whether or not the Landlord complies with the Act, unless the Tenant has authority under the Act to make deductions or not pay rent.

The Tenant failed to pay any rent for the duration of this tenancy, and although the Tenant had cleaning, repair and rodent issues, these are not sufficient reasons to give authority to the Tenant to not pay rent. The Tenant even indicated at the end of July, 2014 that she was happy to continue the tenancy and pay August, 2014 rent which she did not because she subsequently decided to leave the tenancy.

I also find that the problems the Tenant experienced do not come under the emergency repair provisions of Section 33 of the Act and neither did the Tenant follow the process as required by the Act in dealing with these issues if she felt they were an emergency. As a result, I find that the Tenant is liable to pay the Landlord for rent relating to the months of July and August, 2014 during which time she still had control and possession of the rental suite.

Section 45(3) of the Act gives a Tenant authority to end a tenancy if the Landlord failed to comply with a material breach of the tenancy agreement after the Landlord was given written notice of the breach and a reasonable time period to correct the breach, which was then not corrected by the Landlord.

In this case, while the Tenant endured problems with the tenancy at the start, I find that the Landlord acted in a reasonable manner to resolve the issues, be it that they were not sufficient in the Tenant's opinion. The Tenant submits that she left the tenancy because of a fear of the rodents and the potential problems they could cause to her, her children and her pets. However, while I am sympathetic to this reasoning, I find that fear of a potential problem is not sufficient reason to end a tenancy and the Landlord should not suffer loss for this reason. Therefore, it is my finding that the Tenant had no authority under the Act to end the tenancy and it would have been more appropriate for the Tenant to seek mutual agreement with the Landlord to end the tenancy, an

Arbitrator's order to end the tenancy or to apply for monetary compensation during the tenancy.

Based on the foregoing, I find that while the Tenant had put the Landlord on notice that she would be vacating the rental suite for another tenancy commencing on August 24, 2014, the Tenant did not fully vacate the suite until September 18, 2014. The Landlord cannot be held responsible for an extended period of time it took for the Tenant to vacate the rental suite because she did not have funds for movers who would have moved the Tenant sooner. As the Tenant vacated the rental suite on September 18, 2014, the Landlord would not have been able to re-rent the suite for the remainder of the month and therefore I find that the Tenant is also liable for the September, 2014 rent. As a result, I find that the Tenant owes the Landlord **\$4,575.00** in unpaid rent.

Section 7(1) (d) of the Residential Tenancy Regulation allows a Landlord to charge an administration fee up to \$25.00 for late payment of rent if the tenancy agreement provides for this fee. The Landlord provided a copy of the tenancy agreement which provides for this fee and as the Tenant failed to pay any rent for the duration of the tenancy, I find that the Landlord is entitled to a total of **\$75.00** in late rent fees.

In relation to the Landlord's claim for damages to the vent covers, the cleaning costs and the carpet cleaning, I find that the CIR is heavily detailed in its content and shows a significant amount of scuffs, marks and damages to the rental suite before the Tenant took occupancy of the rental suite. The move out portion also details several concerns of the Tenant which were noted. Therefore, I find that the CIR is not useful in making a determination on this portion of the Landlord's claim. I find that the Landlord failed to give the Tenant a second opportunity to complete a move in CIR on the approved form and it was not sufficient for the Landlord to provide the Tenant with a completed copy and ask to the Tenant to compare it against the rental suite and return it back signed.

I find that the Tenant's written and photographic evidence is sufficient to show that the rental suite was not provided to the Tenant reasonably clean and undamaged and I accept that the carpets were soiled by the rodent activity which was proven in this tenancy. On this basis, I am not prepared to grant the Landlord's claim for damages and cleaning of the rental suite as I am unable to conclusively determine what cleaning and damage was caused by the Tenant and what was present before the Tenant moved in.

As the Landlord has been successful with the majority of her claim, the Landlord is also entitled to recover from the Tenant the **\$100.00** filing fee for the cost of this Application pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is \$4,750.00.

As the Landlord already holds the Tenant's **\$750.00** 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 \$4,000.00 in monetary compensation.

In relation to the Tenant's Application, Section 32(1) of the Act requires a Landlord to provide a rental suite that is suitable for occupation by the Tenant. In this case, I find that the Landlord failed to meet their obligations in providing the Tenant with a clean and rodent free rental suite.

The Landlord's invoice of the cleaning provided prior to the Tenant moving in, indicates that a 'quick' clean was performed and the Tenant's photographic evidence supports the fact that the rental suit was not reasonably cleaned and provided undamaged.

However, I find that the e-mail evidence and the oral testimony of the Landlord provide sufficient evidence that the Landlord acted in their obligations and duty to make the necessary repairs, to clean the rental suite and deal diligently with the rodent problem. I am also satisfied that by the end of July, 2014 the rental suite, having been cleaned twice by a professional company, was reasonably clean and that the rodent problem had been dealt with; this was confirmed by the Tenant in an e-mail to the Landlord.

In determining the amount of compensation payable to the Tenant, I find that the Tenant has no merit for any compensation relating to the months of August and September, 2014 as during this period the rental suite was being provided to the Tenant as required by the Act. I also find that the Landlord cannot be held responsible for the Tenant's potential moving costs that could have been incurred and I dismiss this portion of the Tenant's monetary claim.

I also find that the Landlord has provided written evidence to doubt the hotel invoices claimed by the Tenant and I am not convinced that the Tenant's only motive that she was away from the rental suite for a period of July, 2014 was because of the issues associated with the tenancy. This is further supported by the fact that the hotels stayed in by the Tenant were in different locations in two provinces.

While the Tenant may have incurred costly hotel bills because of her allegation that she had to move out while the problems were being dealt with, I find that I am unable to award the Tenant the hotel costs. However, compensation would be more appropriate on a prorated basis for the time the Tenant was not able to have full enjoyment of the rental suite.

Therefore, I do find that the Tenant is entitled to monetary compensation based on the proven evidence of the rodent problems and cleaning issues which she identified from the onset of the tenancy. However, I find that this should be limited to an amount based on the fact that the Landlord took reasonable steps to deal with the problem. I also find that based on the materials purchased by the Tenant to clean the rental suite and the time required for such cleaning of the rodent activity, this should also be taken into account when considering the amount awarded to the Tenant.

Based on the foregoing, I find that the Tenant is entitled to an appropriate amount of one month's compensation for **\$1,525.00**. As the Tenant would have been entitled to some compensation, I also award the Tenant the **\$50.00** filing fee for the cost of having to make this Application to achieve her compensation. Therefore, the total amount awarded to the tenant is **\$1,575.00**.

The Act allows me to offset awards that I find are payable to the parties. Therefore, after offsetting the Tenant's monetary award with the Landlord's award, the Tenant owes the Landlord a total amount of **\$2,425.00** (4,000 – 1,575).

Conclusion

For the reasons set out above, I hereby grant a Monetary Order in the amount of \$2,425.00 in favor of the Landlord pursuant to Section 67 of the Act. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

The Landlord is able to keep the Tenant's security deposit and is given leave to re-apply for outstanding utilities.

The Tenant's Application for \$1,575.00 is allowed and the remainder is dismissed without leave to re-apply.

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 07, 2014

Residential Tenancy Branch

