



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, MNSD, OLC, RP, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement; for a Monetary Order to recover the security deposit; for an Order for the landlords to comply with the *Act*, regulation or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant and landlords provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All relevant evidence and testimony of the parties, with the exception of the landlords' digital evidence which could not be viewed at the hearing, has been reviewed and are considered in this decision.

At the outset of the hearing the parties agreed that the landlords had withdrawn the One Month Notice to End Tenancy. The tenant withdraws her application to cancel that Notice and to recover the security deposit as the tenancy is continuing at this time.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlords to comply with the *Act*?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit, site or property?

Background and Evidence

The parties agreed that this month to month tenancy started on May 01, 2014. Rent for this unit is \$1,485.00 per month due on the 1st of each month. The tenant paid a security deposit of \$748.00 on March 10, 2014 when the tenancy agreement between the parties was signed.

The tenant testified that when she moved into the unit it was supposed to have been cleaned including the carpets; however, when the tenant arrived after the movers had placed her belongings in the unit the tenant found that many areas of the unit were dirty and the carpets in the bedrooms were stained and had a strong smell of urine. The tenant spoke to the landlord who said it was all fine and the previous tenant had shampooed the carpets but the landlord CL stated he was sick and could not smell the carpet odour. The tenant asked CL for the previous tenant's carpet cleaning receipt but was told that the landlords did not have one. The landlords refused to have the carpets cleaned so the tenant called a carpet cleaning company and they came out and cleaned the carpets. The carpet cleaner commented that it did not look as if the carpets had been cleaned by the previous tenant and the carpet cleaner has written on the invoice that the carpets smell strongly of urine. The carpet cleaner also recommended a second clean of the carpets which the tenant has not been able to have done.

The tenant testified that the next day after taking possession of the unit she called the landlord about the cleaning required in the unit as the tenant felt she could not unpack her belongings due to the unclean condition of the unit. The landlords laughed at the tenant and said absolutely not they would not clean the unit. The tenant testified that she proceeded to take photographs of the dirty areas of the unit and refers to these photographs and digital evidence. The tenant testified that the photographs show urine stained carpets, urine and dog feces on the walls and baseboards, unclean cupboards and surfaces and unclean floors and sides of appliances. The tenant testified her cleaner spent 10 hours cleaning the unit and the tenant spent a further 10 hours cleaning.

The tenant testified that the two bedroom windows in her daughters' bedrooms had broken latches which made it difficult to open and close the windows. CL came and showed the tenant how to use a pair of plyers on the latches but the tenant found this too difficult. The tenant's six year old daughter was found by the tenant hanging out of her bedroom window so the windows now have to remain closed. The tenant testified that this has also contributed to the strong smell of urine in the bedroom as the tenant cannot leave the window open and her six year old daughter now shares the tenant's bedroom.

The tenant testified that there were five burnt out light bulbs at the start of the tenancy. The tenant notified the landlord of this and was told they were too expensive to replace so the tenant bought new light bulbs and replaced them herself.

The tenant testified that prior to signing the tenancy agreement the landlords assured the tenant that the downstairs tenant was an older man who was seldom there; however, the tenant found that a younger man lived in the unit. This man contacted the tenant and asked the tenant to meet for coffee. When the tenant agreed this man accessed the tenant's unit through the connecting door. The tenant testified that the door lock on the connecting door is on the downstairs tenant's side so the tenant

purchased a door chain and put a piece of furniture in front of the connecting door for security reasons.

The tenant seeks to recover the following amounts:

Either one month's rent of \$1,495.00 or a rent reduction due to the fact her daughter cannot use her bedroom.

\$140.70 for carpet cleaning;

\$200.00 paid to a cleaner to help the tenant clean the unit and \$200.00 for the tenant's time in cleaning the unit;

\$18.90 for replacement light bulbs;

\$3.77 for the safety chain on the connecting door

The tenant had applied for \$400.00 and amended her claim to amount of \$2,058.37 as documented in her amended application.

The tenant seeks an Order for the landlords to comply with the *Act* with regard to making the windows safe and secure and to providing a hygienic environment with regard to the smell of urine on the bedroom carpets. The tenant also seeks an Order for the landlords to repair the windows and to clean or replace the carpets in the bedrooms.

The landlords disputed the tenant's claims. VL testified that the tenant viewed the unit on two occasions prior to signing the tenancy agreement and paying the security deposit. VL testified that her husband CL saw the tenant's dog urinating on the carpet in June; 2014 but still waived the pet damage deposit.

VL refers to the landlords' documentary evidence of the previous tenant's move out condition inspection report in which it is documented that the carpets were clean and shampooed. VL testified that they did not require the previous tenant to provide a copy of the carpet cleaning receipt as they had witnessed the carpet cleaner unloading his truck the day before the inspection was done. On the previous tenant's move out inspection there were only four items documented as damaged; \$100.00 was deducted

from that tenant's security deposit to pay for the damage and this damage was rectified before this tenant moved into the unit on May 01, 2014. VL refers to this tenant's move in condition inspection report in which the same damage is not documented to prove that the landlords made those repairs.

VL testified that the tenant was allowed to move some of her belongings in on April 29, 2014 where the tenant was then able to see the unit without the previous tenant's belongings and her move in inspection was completed on April 30, 2014. The tenant signed the report to agree that the report fairly represents the condition of the unit. In that report there were six items noted as dirty. These included the counter tops which were stained, the cabinets and doors, the stove top and oven and inside the washer and dryer. Both window handles were noted as broken. VL testified the tenant then had the opportunity to notify the landlords in writing that she wants the window handles repaired or that there is more cleaning required in the unit. VL testified that CL did show the tenant how to open and close the windows with a pair of pliers and she could also open them by pulling out the top and bottom of the window.

VL testified that from April 30 to September 16 when the tenant filed her application the landlords were not notified of the issues the tenant has raised with the carpets, the cleaning, the windows or the connecting door. VL agreed that there were four light bulbs burnt out and the landlords replaced that fixture over the vanity in June, 2014 so the tenant could have managed with the two light bulbs that were working until that time.

VL testified that they did approve the tenant's request to have the carpets cleaned and had written on the move in inspection report that the tenant would not have to pay to have the carpets cleaned at the end of the tenancy if she had them cleaned at the start of the tenancy. VL testified that the tenant agreed to this arrangement but now seeks to recover the costs incurred to have the carpets cleaned.

VL testified that if there was any additional cleaning required the tenant should have notified the landlords. The landlords disputed that any cleaning would have taken 20

hours extra. VL refers to the tenant's photographic evidence and states that these pictures are not dated so how does this evidence suggest that these were taken at the start of the tenancy and not five months later when the tenant filed her claim against the landlord. Had the tenant taken these pictures at the start of the tenancy and showed them to the landlords the landlords would have had these areas of the unit cleaned.

VL testified that the landlords conducted monthly inspections of the unit and for the entire term of the tenancy the tenant has not raised any of these issues with the landlords either verbally or in writing.

The tenant responded to the landlord's testimony and testified that all the photographs were taken within the first week and were uploaded onto the CD on September 25, 2014 from the tenant's phone. The tenant testified that the date on her phone shows the photographs were taken on May 05 and May 06, 2014. The tenant responded to the landlord's testimony and testified that she did call the landlords the day after she moved into the unit and made it clear to the landlord that the unit was unacceptable due to the unclean condition, the carpets, the light bulbs and the windows. The tenant also refers again to the invoice from her carpet cleaner who has stated the carpets smelt of urine. The tenant testified that while CL was at the unit the tenant actually took a rag and cleaned an area in the kitchen which CL had stated was stained and could not be cleaned.

VL testified that the lower tenant has kept the connecting door closed for three years and there has never been a problem. The first time the landlords heard it was a problem was when they received the tenant's hearing package. At that time the landlords called the lower tenant and asked what had happened. The lower tenant informed the landlord that he and the upper tenant had exchanged text messages about having coffee in the upper tenant's unit. The two tenants met at the connecting door and it was mutually agreed to open the door. VL testified that they later inspected the chain the tenant had put on her side of the door and found it was satisfactory and they also informed the lower tenant that his door must be kept locked at all times.

VL testified that had they known about the tenant's concerns about the windows they would have had the windows changed as the window locks are now obsolete. VL testified that they are also happy to look into the tenant's claim regarding any urine smell on the carpets and if necessary the carpets will either be cleaned again or changed.

The tenant testified that she did not know she had to put her concerns in writing to the landlords and thought that by telling them verbally about the problems they should have acted on her complaints.

Analysis

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

With regard to the tenant's claim for money owed or compensation for damage or loss; I refer the parties to s. 32 (1) (a) (b) of the Act which states:

Landlord and tenant obligations to repair and maintain

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I also refer the parties to s. 32(5) of the Act which states:

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I am satisfied from the evidence presented that the carpets in the bedrooms were not in a suitable condition due to the urine smell as documented on the carpeting cleaners invoice. However, the parties did agree that the tenant could have the carpets cleaned and then would not have to do so again at the end of the tenancy. I find therefore the tenant is not entitled to recover the cost for the carpet cleaning of \$140.70 as the tenant had already reached an agreement with the landlords concerning this matter.

I am satisfied with the evidence before me that the unit was not clean when the tenant took possession of the unit. The move in condition inspection report refers to areas that required cleaning and the tenant has included photographs of these areas along with other areas that were not noted on the inspection report; however, I am not satisfied that the cost of cleaning these areas of the unit would have taken two people, one of whom is a professional cleaner, 20 hours. I am also not satisfied that the tenant did her due diligence by informing the landlord of all other areas to be cleaned when the tenant took her photographs so the landlords could have made arrangements to have the unit cleaned. I therefore must limit the tenant's claim to **\$200.00**.

With regard to the tenant's claim concerning the broken window latches, I find this is a safety issue both for the safety of the tenant's younger child and the security of the unit. I am not satisfied with the landlords' evidence that the tenant did not raise these issues as a concern within the five months of the tenancy as the landlords were aware that the window latches did not work and should not have expected the tenant to use plyers or other means to open and close the windows. The tenant has claimed one month's rent or a rent reduction due to the loss of use of this room due to the window latches and the urine smell. I find awarding the tenant an amount equivalent to one month's rent would be extreme in these circumstances especially as the tenant should have continued to put her concerns in writing to the landlords and requested that the landlords repaired the windows in a timely manner and deal with the smell in the carpets. I will; however, allow the tenant a reduction in rent for the months since the tenant filed her application and thus notifying the landlords of her concerns of \$150.00 a month from September, 2014 to November, 2014. A monetary award has been issued to the tenant for an

amount of **\$450.00**. This rent reduction of \$150.00 will continue until such a time as the landlords repair or replace the windows in the bedrooms and deal with the urine odour in the carpets.

With regard to the tenant's claim for 3.77 for a safety chain; I am satisfied that the tenant did not feel secure in her unit as the lock on the connecting door was on the lower tenant's side of the door. This meant that the lower tenants or anyone accessing the lower tenant's unit could gain access to the tenant's unit at any time. It is a landlord's responsibility to ensure each unit is secure and I therefore uphold the tenant's claim of **\$3.77** for the cost of putting on a safety chain.

With regard to the tenant's claim for light bulbs; the landlord agreed that some light bulbs were burnt out on the fixture above the vanity. The landlord testified that this fixture was going to be replaced; however, the tenant has a right to have all the bulbs working in the unit at the start of the tenancy and therefore has a right to replace any bulbs that are burnt out and seek reimbursement from the landlords. I therefore uphold the tenant's claim of **\$18.90**.

With regard to the tenant's claim seeking an Order for the landlord to comply with the *Act*. I will deal with this section under repairs. I Order the landlords to comply with s. 32 of the *Act* with regard to the maintenance of the bedroom windows. The landlords must make repairs to the windows within three weeks of receiving this decision. I further find the landlords must inspect and make any repairs required to eliminate the urine odour from the bedroom carpets within three weeks of receiving this decision.

As the tenant's claim has some merit I find the tenant is entitled to recover the filing fee of **\$50.00**. A Monetary Order has been issued to the tenant for the following amount:

Cleaning	\$200.00
Compensation for loss of full use of a bedroom	\$450.00

Safety chain	\$3.77
Light bulbs	\$18.90
Filing fee	\$50.00
Total amount due to the tenant	\$722.67

Conclusion

I HEREBY FIND in partial favor of tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$722.67**, pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondents. If the respondents fail to pay the Order the Order is enforceable through the Provincial Court as an Order of that Court.

I order the landlords to repair the windows within three weeks of receiving this decision.

I order the landlords to take the necessary steps to eliminate the urine odor from the bedroom carpets within three weeks of receiving this decision.

I order the tenant to reduce her rent by \$150.00 per month from December, 2014 until such a time as the windows are repaired and the odor in the carpets is eliminated. If the landlords comply with the order to repair the windows and deal with the odor in the carpets within three weeks of receiving this decision then the tenant must pay the full amount of rent due for December, 2014.

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: November 03, 2014

Residential Tenancy Branch

