



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kandola Ventures Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MND, MNSD, FF
MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied as against the estate of a tenant and as against another named tenant 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 pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied as against the landlord company for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord.

An agent for the landlord company and both tenants attended the conference call hearing for the first day scheduled, however it was not determined that either party had been provided with all of the evidence that the other party had provided to the Residential Tenancy Branch. The hearing was adjourned to a specific date and time and both parties were ordered to exchange evidence.

The matter reconvened on the second day scheduled, and both tenants and two agents of the landlord company attended, and each party gave affirmed testimony. The tenants also called one witness who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No further issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment and aggravated damages?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the pet damage deposit or security deposit?

Background and Evidence

The first agent of the landlord testified this month-to-month tenancy began on April 1, 2009. Rent was \$735.00 per month which was increased to \$758.00 effective June, 2010 and then to \$780.00 per month on September 1, 2011, due on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$367.50 which is still held in trust by the landlord, and no pet damage deposit was collected. A copy of a move-in and move-out condition inspection report has been provided.

The landlord's agent further testified that the tenant passed away and the landlords did not know who would be looking after the estate. Several different people were in and out of the rental unit without providing any information so the landlords changed the locks probably around June 7, 2014. Rent had been paid in full by the deceased tenant, and on June 8, 2014 the landlords gave the tenant's daughter a key to the rental unit.

The landlord's agent further testified that on or about June 3, 2014 the landlord had received the message stating that the tenant had passed away. The son of the tenant and his girlfriend moved into the rental unit around June 8 or 9, 2014 and stayed till June 29, 2014. They are the applicants named in the Tenant's Application for Dispute Resolution. A move-out condition inspection report was completed by the parties that day and a forwarding address of the applicants was provided in writing at that time.

The landlords claim carpet cleaning costs in the amount of \$84.00 and have provided a copy of a receipt. The landlord's agent testified that the rental unit was clean at the end of the tenancy but not the carpet.

The landlords also claim \$300.00 for a broken window in the dining room which was not broken previously, but have not provided a receipt or estimate for the cost, stating that it was \$250.00 plus \$50.00 for installation.

The second agent of the landlord testified that after the tenant had passed away, the landlord's agent decided to secure the suite to protect it. The tenant's daughter told the landlord's agent that the tenant named in the Tenant's Application for Dispute Resolution could move the deceased tenant's belongings out of the rental unit.

The first tenant testified that the carpets were old, in atrocious condition and new carpets were needed throughout the tenancy. She attended the rental unit since it's been re-rented to retrieve mail and the carpets have been replaced with laminate.

The tenant further testified that the other named tenant had been taking care of the deceased tenant every day and the landlords were introduced to both of them, and the landlords knew that under the guidance of the deceased tenant's daughter, they were to clean out the rental unit.

She further testified that the landlord's agents would not give any of the parties a key so they couldn't leave or they wouldn't have access to get the tenant's belongings out. The key was finally given about the 8th or 9th of June. The tenants have provided a Monetary Order Worksheet wherein they claim moving costs in the amount of \$152.86 for the hassle caused by the landlords in trying to get moved, \$900.00 for loss of quiet enjoyment by the landlords' insistence to inspect every week, which conflicted with their schedules, and \$735.00 for return of double the amount of the security deposit.

The tenant's witness testified that she is the eldest daughter of the deceased tenant, and the tenant had no Will. The witness notified the landlords that the tenants named in the Tenant's Application for Dispute Resolution would be packing up the apartment after the deceased had passed away. The witness emailed the landlord on June 3, 2014 and didn't get a response, so sent 2 more emails and still didn't get a response. The witness and her sister went to the apartment and the tenants were there as well as one of the landlord's agents. He said in front of all of the parties that they weren't allowed to be there. He didn't want them staying there, and said that the parties could have in and out access. The other landlord's agent knew the witness because the witness was there when the lease was signed at the outset of the tenancy. No one asked the witness for a copy of the Will, but the locks were changed by the landlord making it difficult to leave because they would have to be let back in again.

The witness also testified that when her mother moved into the rental unit the carpets were in very poor shape and a disgrace and dyed pink in the centre. Other units were

being replaced with laminate, but not this rental unit even though the tenant was in a wheelchair.

When asked how the landlord's agents could trust that the witness was the person entitled to administer the estate, the witness responded that the landlord would not listen to her and didn't ask.

Analysis

Firstly, with respect to the tenant's application, I find that the tenants are not and never were tenants of the landlord and therefore, the application is dismissed.

I accept the testimony of the witness that the landlord's agent never asked about a Will and refused to listen to her. During the course of the hearing the landlord's agent continually interrupted the testimony of others, insisted on testifying continually out of turn, spoke over me on several occasions and quite simply refused to listen.

The situation as I see it was a family of siblings attempting to deal with their departed mother's estate, part of which involved the responsibility of moving belongings out of the rental unit. The landlord's agents made that difficult but never asked for anything that would satisfy them that the siblings were doing so lawfully.

With respect to the landlord's application, I have reviewed the move-in condition inspection report which shows a signature of the tenant at the time of move-in showing that she agreed with the report and that the floors were in fair or good shape. A tenant is expected to clean a carpet after one year of a tenancy and this tenancy was for longer. Regardless of whether or not the landlord replaced the carpet later, the landlord had the lawful right to attempt to get it cleaned prior to replacing it, considering the move-in condition inspection report. Therefore, I find that the landlord has established a monetary claim in the amount of \$84.00.

With respect to the broken window, I find that the landlord has failed to establish the cost to repair or replace it. No receipts, estimates or any other evidence has been provided. The landlord's agent testified that the cost was \$250.00 plus \$50.00 for installation, but I don't know if that included taxes or not, or whether that is a rounded-off number, or if the landlord found a sale on windows. Therefore, the landlord's application for the cost of repairing or replacing a damaged window is dismissed.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

I order the landlord to keep \$134.00 of the \$367.50 security deposit and return the balance to the estate of the tenant at the address provided by the tenant's children on the move-out condition inspection report.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

I hereby order the landlord to keep \$134.00 of the \$367.50 security deposit and return the balance to the estate of the tenant at the address provided by the tenant's children on the move-out condition inspection report.

This order is final and binding and may be enforced.

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: December 30, 2014

Residential Tenancy Branch

