



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 55;
- a monetary order for loss of rent and damage to the rental unit pursuant to section 67; and
- authorization to recover her filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the commencement of the hearing, the landlord confirmed that she was withdrawing her original application for an Order of Possession for cause as the tenant vacated the rental unit on July 31, 2014. The landlord's application for an Order of Possession is withdrawn.

The landlord also confirmed information in the Details of the Dispute section of her application in which she clearly requested the recovery of her loss of rent for the month of August 2014. As this was included in her application and the tenant was aware of this element of the landlord's claim for a monetary award, I have included consideration of her request for the loss of rent for August 2014, in my decision.

The tenant confirmed that she was handed the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on June 26, 2014, from the landlord's husband, (the male landlord). I find that the 1 Month Notice was duly served to the tenant on that date in accordance with section 88 of the *Act*. I also find that this tenancy ended on July 31, 2014, in accordance with that 1 Month Notice.

The tenant confirmed that she received the landlord's dispute resolution hearing package, which the landlord testified she sent to the tenant by registered mail on August 21, 2014. I find that the tenant was duly served with this package in accordance with section 89(1) of the *Act*. Both parties confirmed that they served one another with their written and photographic evidence packages, which I had before me while they referred to their evidence at this hearing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for loss of rent and damage arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This one- year fixed term tenancy began on October 26, 2013. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlord, the landlord and her husband were identified as co-landlords, and the tenant and a male, VTP (the male tenant), were identified as the tenants. All four parties signed the Agreement on October 27, 2013. Monthly rent for this basement suite in the landlord's home was set at \$1,150.00, payable in advance on the first of each month. The landlord and her husband live in the upstairs portion of this home. Although the tenants paid a \$1,150.00 security deposit, twice the allowed amount under the *Act*, this deposit was returned to the tenants on August 13, 2014.

The landlord's application for a monetary Order of \$2,238.92 was outlined in the landlord's Monetary Order Worksheet as follows:

Item	Amount
Carpet Cleaner	\$18.43
Carpet Shampooer Rental	28.00
Odor Eliminator	3.99
Painting Supplies	43.50
Repainting Rental Suite	945.00
Loss of Rent – August 2014	1,150.00
Filing Fee	50.00
Total Monetary Order Requested	\$2,238.92

The landlord entered into written evidence undisputed copies of receipts documenting her expenditure of the above amounts to repair the rental unit after the end of this tenancy. The tenant testified that she had no doubt that the landlords incurred these costs.

The landlord and her husband provided written evidence and sworn testimony that the above losses were incurred as a result of a pervasive smell of marijuana in this basement rental unit, which could only be removed after repainting and carpet cleaning. They testified that these smells originated in this rental unit and arose during the course of this tenancy. They testified that the subsequent tenant who was scheduled to move into this rental unit on August 1, 2014, would only do so after the marijuana odour was removed through repainting and more carpet cleaning. They gave undisputed sworn testimony that the rental unit was freshly painted shortly before this tenancy began (by July 2014) and required repainting with a sealing primer and an oil based paint in order to remove the marijuana smell from the rental unit.

The landlord also entered into written evidence a copy of a June 11, 2014 letter to the tenants warning them of the "Strong Marijuana Odors" coming from the tenants' basement rental unit. This letter advising the tenants that the landlords would serve them with a notice of early termination of the tenancy if there were further incidents of marijuana smoking or odor coming from their rental unit read in part as follows;

This letter is to remind you that smoking, storing, vaping, making cannabutter is not permitted in your apartment unit. We have noticed a strong marijuana odor throughout the whole house and on our patio. We mentioned to you that was a smoke/marijuana odor coming from your unit on February 28th. On the morning on June 11th, we again had the smell overwhelming the top two floors of our house. This is the second incident that we have specifically mentioned to you. When I spoke with you this morning I requested that you take immediate steps to ensure that you, your family and guests or visitors do not smoke, vape, cook cannabutter or store marijuana in the suite. It was also requested that you get the smell out of the suite...

We want to be able to enjoy a clean and safe environment. As we pointed out we have a child upstairs and are trying for a second. Exposure to second-hand smoke is both a health hazard and the smell is an irritation...

The landlord also gave undisputed written evidence in the form of a February 28, 2014 text message exchange between the landlords and the female tenant in which the landlord advised that "it stunk like smoke in the hall" near the door of the rental suite. Although the tenant's text message response denied that anyone had been smoking in the rental suite, she apologized "for the smell" and assured the landlord that she would "make sure it doesn't happen again."

At the hearing, the landlord testified that the smell of marijuana became much worse after the landlords issued the tenants with the 1 Month Notice. She said that once the tenants knew they were going to have to end their tenancy early, the tenants "did not care" about the landlords' concerns about the marijuana smell in the rental unit and the smell became worse than ever. The landlord and her husband gave undisputed sworn testimony that there had been no previous tenant in the rental unit between the time they bought the property in July 2014 and when this tenancy began. They said that the whole rental unit had a very bad smell of marijuana when the tenancy ended. They maintained that the rental unit was used for the storage of and/or cooking of cannabis based products, which permeated the whole rental unit and extended into other areas of the home. Although the landlords attempted to rid the rental unit of the marijuana smell by cleaning alone, they testified that the only solution to eradicate this odour was to clean the carpets and repaint the walls. The landlord's husband testified that the smell of marijuana "stuck to the walls and the cabinets" of the basement suite. He said that once it became apparent that cleaning alone would not rid the rental unit of the smell of marijuana, he arranged for the rental unit to be repainted. He retained the same painting company which had painted most of that rental unit shortly before this tenancy began. He said that the new tenant who had agreed to move into the premises on August 1, could not move in because of his objection to the smell of the rental unit. The landlord's husband testified that the

cleaning and repainting could not be completed until shortly before the end of August, when the new tenant started moving his possessions into the rental unit.

The landlord confirmed that she and her husband had overlooked preparing a joint move-in and move-out condition inspection report following the joint move-in and joint move-out condition inspections of the premises with the tenant. The tenant did not dispute the landlord's claim that they did walk through the premises together both before and after the tenancy ended. The male landlord confirmed that the rental premises were properly cleaned at the end of the tenancy with the exception of the pervasive smell of marijuana, which gave rise to the landlord's ending of this tenancy before the scheduled termination date for the tenancy.

The landlord provided a number of written statements from individuals familiar with this situation, confirming the landlord's claim that the rental unit was clean and fresh when this tenancy began, but was smelling of marijuana by the end of this tenancy. The authors of two of these letters participated in this hearing, both giving undisputed sworn oral testimony to confirm the accuracy of their letters submitted into written evidence by the landlord. One of these witnesses was the new tenant who took occupancy of the premises in full as of August 31, 2014, after the landlords had repainted and cleaned the carpets following the tenant's July 31, 2014 end to her tenancy. This witness testified that he advised the landlords when he first viewed the rental unit that he was concerned about the "strong marijuana pot smell" in the rental unit. He said that he advised the landlords that he never would have moved into the rental unit had they been unwilling to remove the strong marijuana smell from the basement rental unit. He said that by the time he moved into the rental unit on August 30, 2014, it was in "new condition." The landlord also entered into written evidence a copy of the new tenant's Agreement, showing that he commenced paying monthly rent as of the first of the month, September 1, 2014.

The landlord's other witness was the painter who had painted most of the rental unit before this tenancy began as well as in August 2014, when he returned to the premises to repaint the entire rental unit. Although it was apparent that the landlords had not alerted him to the timing of this teleconference hearing, he did give undisputed sworn testimony that the contents of his letter entered into written evidence by the landlord accurately reflected his recollection of events surrounding his attendance at this home. His letter noted that the house was in excellent condition after his initial painting of the walls and ceilings shortly after the landlords purchased this home. In his letter, he noted that when he returned to the home in August 2014 to repaint the basement rental suite, "it had a strong weed odour." His letter stated that "after a good coat of sealer and paint on the ceilings it is already noticeably improved" and when the repainting of "the walls are complete we expect their problems with the odour to be resolved." His letter also noted the work undertaken by the landlords to try to avoid having to incur the cost of repainting and stated that "the suite still had a strong odour after all their efforts," observing that he could "confidently say this was their last resort aside from fully replacing the carpets."

The tenant did not ask any questions of the landlord or any of their witnesses. She entered into written evidence a copy of a June 31, 2014 letter written from her and the male tenant to the landlords, confirming that they were not disputing the landlords' eviction notice. In this letter, the tenants stated that they were entitled to a return of their full security deposit because the landlords had not conducted a formal inspection of the rental unit, presumably including the issuance of a report of that inspection, at the start of this tenancy. In the letter, the tenants also committed to ensure that the suite would be cleaned to the best of their abilities.

At the hearing and in written and photographic evidence, the tenant maintained that she did clean the rental unit properly at the end of this tenancy. Although she did not hire a professional carpet cleaner, she maintained that there was no provision in the rental agreement requiring the tenants to do so. She testified that she borrowed a carpet cleaner from a friend and used it on the carpets.

At the hearing, the tenant gave sworn testimony that she does not use or smoke marijuana and that her co-tenant had no medical marijuana licence. She said that she and the co-tenant never used marijuana for cooking (or baking) purposes, one of the landlord's assertions. In response to my question as to whether there was ever marijuana kept on the rental premises during her tenancy, the tenant testified that "to the best of her knowledge" there was never any marijuana kept on the rental premises during her tenancy. The landlord's sole question regarding the tenant's testimony was a question as to whether the tenant recalled that she was giving the above testimony under oath. The tenant confirmed that she had given the above statements under oath.

In her written evidence and sworn testimony, the tenant maintained that the male landlord had a medical marijuana licence and was frequently observed smoking marijuana on the landlords' back. In a letter signed by both tenants, they maintained that they believed that the landlords' February 2014 text regarding smoke referred to cigarette smoke and not marijuana smoke. Since they did not hear from the landlords about this again after the February 2014 text message exchange, they assumed that the landlords were satisfied that there were no ongoing smoking issues regarding their rental suite. In their letter, they referred to incidents of June 11, 2014 and July 12, 2014, denying that they were responsible for any marijuana smell in the property on those dates. They noted that they were not even in the rental suite on July 11 or July 12, 2014, as they were out of town then and could not have been responsible for the marijuana smell identified by the landlords in their written evidence referring to that date.

The landlord said that her husband had a medical marijuana licence, and did use medicinal marijuana for about a two-month period when he was experiencing health problems. The male landlord testified that he had this licence for approximately five months, but only smoked outside and never in the house.

The tenant entered into written evidence a number of letters of support from three individuals. Some of these letters addressed the landlord's claim that the carpets were not adequately cleaned. One of these letters confirmed that the male tenant borrowed her steam cleaner for

the carpets. Some of the other letters confirmed the tenant's claim that the female tenant was not a cannabis user, and that the authors of those letters, friends of the female tenant never smelled cannabis during their frequent visits to the rental unit. The author of one of these letters, the tenant's Witness JP, stated the following in her letter:

...I assisted RK in the cleaning of said dwelling on her move out date of July 30th, 2014. During this time we did a complete clean of all rooms and steam cleaned the carpets. When we left, the dwelling was spotless and smelled a lemon cleaner...The accusations of cannabis smell are false...

At the hearing, tenant Witness JP gave undisputed sworn testimony that the above statements were honest and truthful.

Analysis

There is no dispute between the parties regarding the good condition of the rental unit at the beginning of this tenancy. The primary issue before me is whether there was damage and loss arising as a result of the odour of marijuana within the rental unit as a result of this tenancy. When disputes arise as to the condition of a rental unit, a consideration of the signed joint condition inspection reports often sheds light on the items under dispute. It would certainly have been helpful had the landlord prepared these reports, which could then be used as a reference point for the state of the rental unit at the end of this tenancy. As I remarked at the hearing, the photographs of the rental unit submitted by both parties reveal little as to whether there was an odour of marijuana in the rental suite by the end of the tenancy, or for that matter, who was responsible for any such odour.

As was noted by the tenant in her written evidence, sections 23(4) and 35(3) of the *Act* require a landlord to prepare a report of the move-in and move-out inspections. The landlord's failure to produce these reports led to the landlord's return of the security deposit to the tenants in full. This does not prevent the landlord from seeking the recovery of losses or damage arising out of this tenancy.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

After hearing from the two landlords and the tenant, and reviewing the sworn testimony from their witnesses, as well as the written statements the parties presented, it is apparent that one or the other of the parties is clearly being untruthful. When assessing credibility, it is important to consider both the manner and tone (demeanour) of the evidence provided by the parties and their witnesses as well as their content, and whether it is consistent with the other events that took place during this tenancy.

In this regard, I found the sworn testimony provided by the two landlords credible. They provided their sworn testimony clearly and in a calm and candid manner, and never wavered in their version of what happened. They also made some important admissions, including the fact that the male landlord had a medical marijuana licence, allowing him to smoke marijuana legally for a five-month period of this tenancy. While I have taken into consideration this evidence, the tenant did not dispute the male landlord's testimony that he never smoked marijuana inside the house, always doing so outside the premises, usually on the deck. Moreover, I find that the landlords' sworn testimony and written evidence was corroborated by written evidence and sworn testimony from two independent and objective witnesses, PG, the current tenant, and IA, the painter, neither of whom had any apparent reason to provide untruthful letters or sworn testimony. The tenant did not ask any questions regarding any of the evidence, either written or sworn testimony at this hearing.

I found the tenant's sworn testimony also credible, but much more carefully worded. While she testified that she was not a marijuana user herself, her qualification of her statement that marijuana was not kept in her rental unit "to the best of her knowledge" left much more doubt as to whether her statement extended to that of her co-tenant. Although the male tenant did sign the letter submitted into written evidence by the tenant, the wording of that letter is all in the first person and appears to have been written by the tenant, and merely signed by the male tenant. While I might accept the statements made by the tenant's witnesses that the tenant was not a marijuana user, the tenant supplied little if any substantive information that would also encompass the male tenant. Had the male tenant called into this hearing or supplied direct written evidence himself, the tenant's assertions would have had far more credibility. While I have no reason to doubt the sworn testimony of the tenant's Witness JP, the landlord did correctly note that JP is an admitted friend of the tenant's as opposed to the landlord's witnesses, who the landlord maintained are more independent and objective.

I have also taken into careful consideration the written evidence supplied by the parties. Again, I find the sequence of events seem to corroborate the landlord's assertions that concerns were raised during the course of this tenancy and the tenancy eventually ended early as a result of the tenants' failure to contest the landlord's 1 Month Notice. The February 2014 exchange of text messages did not reveal any denial that there was a smell emanating from the rental unit. A warning letter was sent to the tenants in June 2014, and there is no record of any written response from the tenants objecting to either that warning or to the landlords' 1 Month Notice. While the tenant attributed the tenants' acceptance of the 1 Month Notice to other issues in dispute during this tenancy, the tenant supplied no written record of any objection or response

to any of the landlords' warnings or concerns until they advised the landlords that the landlords' failure to conduct a joint move-in condition inspection and inspection report entitled the tenants to a full return of their security deposit within 15 days.

Under these circumstances and based on a balance of probabilities, I find it more likely than not that the landlord did experience a loss of rent for the month of August 2014 and damage arising from the smell of marijuana originating in this rental unit during this tenancy.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for August 2014, in order to mitigate the loss of rent resulting from the premature ending of the tenants' fixed term tenancy. The landlord did have a prospective renter prepared to take possession of the rental unit by August 1, 2014, had the premises been ready for his occupation without the odour of marijuana remaining in the rental unit. I find the tenant responsible for this odour and the landlord's loss of rent for August 2014. I do not find it unusual or untimely that the landlords tried to avoid the added expense of repainting by first conducting additional cleaning and only resorting to repainting when it became apparent that other measures would not be successful in providing the new tenant with the accommodations he was seeking. For these reasons, I find that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenant's exposure to the landlord's loss of rent. I issue the landlord a monetary award of \$1,150.00 for her loss of rent for August 2014.

Although I accept the landlord's claim for repainting, I also take into account, the RTB's Policy Guideline 40, which outlines the useful life of a number of items included in a residential tenancy. This Policy Guideline establishes that the useful life of an interior paint job is four years (or 48 months). As the landlord had to repaint the rental unit approximately one year after it had been previously painted, I allow the landlord a monetary award equivalent to three-quarters of the landlord's proven repainting costs or \$741.37 (i.e., $\$988.50 \times \frac{3}{4} = \741.37).

I now turn to the landlord's application for a monetary award for the added expenses for carpet cleaning, the rental of a carpet shampooer and an odour eliminator. I find that there is first-hand evidence provided by both the tenant, her witness, and another individual who lent her carpet cleaner to the tenant that the tenant did steam clean the carpets at the end of this tenancy. There was no Addendum to the Agreement requiring the tenants to professionally steam clean the carpets. In fact, the landlords did not hire a professional carpet cleaner, but did this work themselves.

I find that the landlord likely did need to incur some costs to try to remove the smell of marijuana from the carpets as a means of possibly avoiding the larger cost of repainting, even after the tenant steam cleaned the carpets at the end of her tenancy. Under these circumstances, I allow the landlord her proven costs for the purchase of an odor eliminator. As the carpets had already been steam-cleaned by the tenant, I allow only half of the landlord's costs for the rental of a carpet shampooer and carpet cleaner.

As the landlord has been successful in her application, I allow her to recover her filing fee from the tenant.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms for loss of rent, damage arising out of this tenancy and recovery of her filing fee.

Item	Amount
Carpet Cleaner and Rental of Carpet Shampooer ($\$18.43 + \28.00)/2 = \$23.21)	\$23.21
Odor Eliminator	3.99
Painting Supplies and Repainting Rental Suite ($\$988.50 \times \frac{3}{4} = \741.37)	741.37
Loss of Rent – August 2014	1,150.00
Filing Fee	50.00
Total Monetary Order	\$1,968.57

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's application for an Order of Possession is withdrawn.

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 09, 2015

Residential Tenancy Branch

