



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 MND, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company and 2 of the 3 named tenants attended the hearing and one of the tenants appeared as agent for the other named tenant. The parties each gave affirmed testimony and were given the opportunity to question each other respecting the testimony and evidence, all of which has been reviewed and is considered in this Decision.

No 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?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for re-keying the rental unit?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on November 1, 2014 and was to expire on October 31, 2015 and then revert to a month-to-month tenancy, however the tenants moved out of the rental unit about the end of February or early March, 2015. Rent in the amount of \$1,750.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$875.00.

The parties had attended a hearing on March 13, 2015 wherein the landlord had applied for an Order of Possession and a monetary order for unpaid rent, and the landlord was ordered to keep the security deposit. The tenants had moved out prior to the hearing, and advised during the hearing that one of the tenants moved out before the end of February, 2015 and the other 2 finished their move on March 1, 2015, so the Order of Possession was not necessary and not ordered. There was no discussion at that hearing about a move-out condition inspection report.

The landlord's agent further testified that a move-in condition inspection report was completed with one of the tenants on October 29, 2014 but the move-out condition inspection report was completed in the absence of any of the tenants on March 11, 2015. A copy has been provided which shows the condition at the beginning and end of the tenancy.

The landlord claims the following:

- \$95.00 for suite cleaning, although the bill actually came out to \$240.00, but some of the work the landlord does not believe is a tenant's responsibility;
- \$150.00 estimated on the landlord's application for replacing the dining room light fixture which didn't work at all and it turned out that just all bulbs were burned out and switch was faulty. An invoice in the amount of \$580.51 has been provided but applies to other things as well, including blinds. Blinds were not new but useable and were bent out of shape at the end of the tenancy. The landlord agrees to deduct the \$90.00 for the second blind bringing the total claim for this invoice to \$490.51;
- \$534.84 for repairs due to a leak during the tenancy in the water shut-off. The tenants let it drip and run before telling the landlord so walls were compromised with moisture and had to be cut out and repaired. When the tenant called she said it had been leaking for 6 days;
- \$279.56 for garbage removal; the landlord's application contains an estimate of \$150.00 but the actual cost was \$279.56; and
- \$137.20 for re-keying the locks; the tenants said they didn't know where to send the keys during the previous hearing.

The landlord also testified that the total claim is \$1,484.27, which is less than claimed in the landlord's application for dispute resolution. He also testified that:

- Repair to wall in master bedroom on details of dispute in the landlord's application is not claimed; and
- Repair to the kitchen sink estimated as \$170.00 in the landlord's application is withdrawn.

The landlord has also provided photographs of the rental unit and copies of receipts for all claims.

The first tenant testified that she called the landlord's agent at the desk and left a message wanting to talk about a mold issue. The tenant did not get a call back and called 3 more times. On January 28, 2015 at 1:00 p.m. the tenant spoke with the landlord's agent who sent someone later that day who said it looked like dirt, then said it was animal feces. Two more gentlemen, contractors that the landlord had hired, and said it was mold due to a major leak. The tenant took

her children to a doctor a lot at the beginning of the tenancy. The kids were sick and the tenant believes it was due to mold.

The tenant further testified that on March 1, 2015 she cleaned the rental unit starting at 6:00 a.m. A lot of cleaning was required because of the mold. The tenant has receipts for carpet cleaning but none have been provided for this hearing.

Blinds were bent on the sides at the beginning of the tenancy and the landlord said they would be changed, but that never happened.

The second tenant testified that she moved out because her son was sick from the mold in the rental unit, and testified that mold kills children's immune system. The tenants had asked the landlord to test the environment but the landlord refused.

The tenant also testified that she cleaned the basement, but not the fungus.

The tenant worked late at night and called the landlord to fix the outdoor light which was repaired during the tenancy.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

The *Residential Tenancy Act* states that a tenant is required to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy, and the condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I have reviewed the reports and the photographs, and I am satisfied that the landlord has established the 4-part test for the following claims:

- \$279.56 for garbage removal;
- \$137.20 for re-keying the locks.

I have also reviewed the invoice of \$580.51 and I am not satisfied that the landlord has established that damage to the lights or the blinds are beyond normal wear and tear. Any award must not put the landlord in a better financial position than the landlord would be if the damage had not occurred. In other words, the blinds and lights were not new at the beginning

of the tenancy and I decline to order that the tenants provide the landlord with new ones at the end of the tenancy.

I also find that the same principle applies to the landlord's claim for \$534.84 for repairs due to a leak during the tenancy in the water shut-off. The landlord has provided a cost to make the repairs, but there is no evidence to satisfy me what it would have cost the landlord if the tenants had told the landlord about it immediately. Further, the photographs show what appears to be mold under the baseboards of the rental unit, and one of the tenants testified that she cleaned except for fungus. Both tenants testified to mold in the rental unit, and considering the photographs, I accept that. In the circumstances, I am not satisfied that the landlord has made out that claim, or any claim for cleaning.

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

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenants pursuant to section 67 of the *Residential Tenancy Act* in the amount of \$466.76.

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: September 16, 2015

Residential Tenancy Branch

