



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUMAC HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Tenants' application: CNR, RR, FF

Landlord's application: OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was scheduled to hear cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and authorization to reduce rent payable. The landlord applied for an Order of Possession and Monetary Order for unpaid rent. The landlord subsequently applied to amend the application to increase the monetary claim and request authorization to retain the security deposit and pet damage deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord confirmed receipt of the tenant's application. The male tenant confirmed receipt of the landlord's application and amended application. The landlord had also named the female tenant as a party to the dispute but registered mail sent to her was returned as unclaimed. The landlord provided the registered mail tracking information as proof of service upon the female tenant. The male tenant in attendance at the hearing stated that the female tenant is his wife, she was aware of these proceedings, and that he was representing both of them. The landlord had also named a third co-tenant in filing the landlord's application but the landlord stated the third co-tenant was not served and should be removed as a party to the dispute. I excluded the third co-tenant as a named party since he was not served. I proceeded to hear the landlord's claims against the two remaining co-tenants.

Both parties provided consistent testimony that the tenants vacated the rental unit and the landlord has regained possession of the rental unit at the end of September 2015. Accordingly, I found it unnecessary to consider whether the 10 Day Notice should be upheld or cancelled and unnecessary to an Order of Possession to the landlord.

Since the tenancy has ended I also found the tenants' request for authorization to reduce rent payable to be moot; however, the tenant was informed that the tenant's remain at liberty to file another application if they wish to seek monetary compensation against the landlord as appropriate.

Accordingly, the tenants' application was dismissed and the remainder of this decision deals with the landlord's monetary claims against the tenants.

Issue(s) to be Decided

1. Is the landlord entitled to recover the amounts claimed against the tenants?
2. Is the landlord authorized to retain the security deposit and/or pet damage deposit?

Background and Evidence

The tenancy commenced October 1, 2014 for a fixed term set to expire September 30, 2015. The tenants paid a security deposit of \$950.00 and a pet damage deposit of \$200.00. The tenants were required to pay rent of \$1,900.00 on the 1st day of every month. The tenants vacated the rental unit in the last week of September 2015.

A move-in inspection report was prepared by the former manager of the property and signed by the female tenant. The move-in inspection report indicates the rental unit was in good condition with the exception of the dishwasher which needed replacement.

The landlord's agent and the male tenant participated in the move-out inspection together. The landlord prepared a move-out inspection report but the tenant would not sign it. The landlord sent the move-out inspection report to the tenants with the evidence package for this dispute. The landlord's wife also took photographs of the property at the end of the tenancy. The tenant stated that the photographs fairly depict the rental unit at the end of the tenancy with the exception of the entry way.

Below, I have summarized the landlord's claims against the tenants and the tenant's responses.

Unpaid rent -- \$1,900.00

It was undisputed that the tenants did not pay rent for the month of September 2015. The landlord seeks to recover the amount payable under the tenancy agreement from the tenants.

In filing the tenants' application the tenants indicated the landlord had agreed to allow the tenants to use their "damage deposit" toward rent for September 2015 but then rescinded this agreement. During the hearing, the tenant did not present this as a basis for not paying rent for September 2015 and I did not consider it further.

In filing the tenants' also indicated there were repair issues or loss of use of a portion of the rental unit; however, I did not hear that the tenants had the landlord's agreement to withhold the rent due to these reasons. Nor, did the tenant have the authorization of an Arbitrator to withhold the last month's rent due to these issues. The obligations of a tenant to pay rent to a landlord under the Act were discussed with the tenant after which he did not present repair issues or loss of use as a basis for withholding rent for September 2015.

Cleaning -- \$160.00

The landlord submitted that the rental unit was not left clean at the end of the tenancy and the landlord incurred cleaning costs of \$160.00. The landlord seeks to recover this amount from the tenants.

The tenant acknowledged that the rental unit needed more cleaning at the end of the tenancy but submitted that the house was not clean at the start of the tenancy. The tenant claimed that the former manager asked the tenants to clean the rental unit at the start of the tenancy but that they could leave it in the same condition at the end of the tenancy. The tenant submitted that he and his wife spent a number of hours cleaning up the property at the start of the tenancy.

Carpet cleaning -- \$178.50

There were pets in the rental unit and the carpeting required steam cleaning. The landlord seeks to recover this amount from the tenants.

The tenant submitted that the carpets were cleaned with a rented rug cleaning machine on the day of moving out.

Carpet replacement -- \$2,811.13

The landlord submitted that the carpeting on the lower floor was stained with pet urine, feces and had fleas. The landlord submitted that the carpeting required replacement and the landlord seeks to recover the replacement cost of the carpeting from the tenants. The landlord testified that the carpeting had been installed in June 2013.

The tenant acknowledged that the carpeting on the lower floor was soiled with pet urine and feces and in need of replacement; but, the tenant also submitted that the carpeting had been pieced together when it was installed in 2013 and it had some stains at the start of the tenancy. The tenant claimed that the former manager had advised the tenants that the landlord intended to replace the carpeting.

The landlord's agent appearing at the hearing acknowledged that the former manager no longer works for the landlord; however, there is no indication that the landlord intended to replace relatively new carpeting. The landlord's agent was of the view that the lines seen in the photograph are from furniture and not pieces of carpeting patched together as suggested by the tenant.

Floor paint -- \$107.21

The landlord purchased and applied sealant paint to the subfloor of the lower floor to seal in the odours from the pet urine. The landlord seeks to recover this amount from the tenants.

The tenant did not object to this portion of the landlord's claim.

Flea treatment -- \$315.00

The landlord submitted that the rental unit had fleas and the landlord initially attempted to deal with the flea infestation by steam cleaning the upper carpeting and replacing the lower carpeting but a few days after the new tenants moved in they complained of fleas so the landlord hired an exterminator to treat the unit for fleas. The landlord seeks to recover this amount from the tenants.

The tenants pointed out that the bill for the exterminator was not included in the landlord's evidence package; however, the tenant was agreeable to paying for the flea treatment if it had been done.

The landlord responded by stating that they have an invoice for the flea treatment and proof of payment and these documents can be provided if necessary.

Vent cleaning -- \$52.50

The landlord submitted that 1.5 hours were spent cleaning the vents in the house of debris and pet hair. The landlord seeks to recover the cost to do so at the rate of \$35.00 per hour.

The tenant acknowledged that the vents had pet hair in them at the end of the tenancy but claimed the vents were dirty at the start of the tenancy.

Other claims

The landlord requested recovery of amounts related to developing photographs; sending documents to the tenants via registered mail; and, administrative services provided in preparation of this dispute. Such claims were dismissed summarily during the hearing as such costs are not recoverable as explained in the analysis section of this decision.

Other issues

The tenant questioned the tenants' liability to compensate the landlord for amounts related to the actions or neglect of the third co-tenant who is not a named party of this dispute. The tenant submitted that the lower floor, which needed the most cleaning and repair, was occupied by third co-tenant. The tenant was informed of a co-tenant's joint and several liability with respect to amounts owed to a landlord. As provided under Residential Tenancy Policy Guideline 13: *Rights and Responsibilities of Co-Tenants* (which is available on the Residential Tenancy Branch website):

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

After informing the tenant of the above he appeared to understand and did not question the co-tenant's liability further. No response to this issue was solicited from the landlord.

The tenant also stated that a move-in inspection report was not done when the tenancy started. Rather, the tenant claimed that the former manager sent a move-in inspection report to the female co-tenant approximately four months after the tenancy started and she signed it. The male tenant claimed that he contacted the former manager after learning his wife had signed the move-in inspection report and was assured by the former manager that they would not be held responsible for any pre-existing damage or cleaning that was needed.

The landlord's agent strongly doubted the tenant's submission and submitted that there is no indication or record that the move-in inspection report was signed four months after the tenancy started.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of everything presented to me, I provide the following findings and reasons.

Unpaid Rent

Under section 26 of the Act, a tenant is required to pay the rent that is due to the landlord, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. The Act provides very limited and specific circumstances when a tenant may withhold rent.

In this case it was undisputed that the tenants failed to pay rent for September 2015 and they occupied the rental unit in September 2015.

The Act prohibits a tenant from applying the security deposit toward rent unless they have first obtained the landlord's written consent. . Written consent was not given in this case.

While it appears the tenants were of the position that the unit required repairs, in order to withhold rent for repairs or loss of use the tenants must first obtain the landlord's consent or seek authorization from an Arbitrator. The tenants did not have such consent or authorization.

In light of the above, I find the tenants violated the Act with respect to their obligation to pay rent that was due September 1, 2015 and the tenants did not present a legal basis under the Act for withholding rent. Therefore, I find the landlord is entitled to recover unpaid rent of \$1,900.00 as claimed.

As the tenant was informed during the hearing, the tenants remain at liberty to file their own Application to seek compensation from the landlord if they wish to pursue a claim for loss of use or enjoyment of the rental unit.

Cleaning

Under the Act, a tenant is required to leave a rental unit reasonably clean at the end of the tenancy. There is no exemption to this requirement. Accordingly, where a rental unit is not provided in a reasonably clean condition at the start of the tenancy the parties should deal with the issue at that time as it is not an exemption from a tenant's cleaning requirements at the end of the tenancy. The tenant claims the former manager indicated they could leave the rental unit dirty in consideration of receiving it in a dirty condition; however, I find that scenario unlikely, unsupported by any other evidence to corroborate that position, and without merit under the Act.

Upon review of the photographs and the testimony of both parties I find the tenants failed to leave the rental unit reasonably clean at the end of the tenancy. I find the landlord's request to recover \$160.00 for cleaning to be reasonable and supported. Therefore, I grant the landlord's request to recover this amount from the tenants.

Carpet cleaning

Residential Tenancy Policy Guideline 1 provides that a tenant is generally held responsible for steam cleaning or shampooing the carpets at the end of the tenancy where the tenants occupied the rental unit more than one year; the carpets are soiled; the tenants smoked in the unit; or, the tenants had uncaged animals in the rental unit. It was undisputed that there were uncaged animals in the rental unit.

The tenant claims to have rented a rug cleaner at the end of the tenancy; however, the tenant did not produce a receipt to corroborate that position. Further, given the otherwise filthy condition of the rental unit, as seen in the landlord's photographs, I find it unlikely the tenants cleaned the carpeting and left the other areas of the unit very dirty. Therefore, I find the landlord has established an entitlement to recover carpet cleaning costs from the tenants as claimed.

Carpet replacement

Having heard the carpets on the lower floor were stained with pet urine and feces I accept that carpet replacement was necessary to remedy the urine that likely penetrated the carpeting, underlayment and sub-floor.

I reject the tenant's position that the carpeting was due to be replaced anyways as being unlikely. At the start of this tenancy, the carpeting would have been just over one

year old and landlords do not usually replace carpeting that is that new unless it is in extremely poor condition. Further, the former manager did not indicate on the move-in inspection report that the carpeting was going to be replaced whereas the former manager did indicate that the dishwasher was to be replaced.

The Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the Act and Regulations is the best evidence of the condition of a rental unit in a dispute resolution proceeding unless there is a preponderance of evidence to the contrary. In this case, the tenant submitted that the move-in inspection report was not prepared in accordance with the Act and Regulations. However, the inspection report is dated for the start of the tenancy, signed by the female tenant and the landlord's agent, and there is no indication on the report that it was prepared four months after the tenancy started. Further, the female tenant did not appear at the hearing so as to provide testimony and be subject to examination. Nor, did the tenants produce any written communication with the former manager to indicate they disagreed with the move-in inspection report. Accordingly, I accept that in signing the move-in condition inspection report the female tenant agreed with the landlord's assessment of the property as indicated on the move-in inspection report. Therefore, I have relied upon the move-in inspection report as the best evidence as the condition of the rental unit at the start of the tenancy.

In light of the above, I find the landlord entitled to recover losses associated to replacing the carpeting on the lower floor; however, I reduce the landlord's award to take into account depreciation of the former carpet since awards for damages are intended to be restorative. Accordingly, where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation I have referred to normal useful life of the item as provided in Residential Tenancy Policy Guideline 40: *Useful Life of Building Elements*. Carpeting has an average useful life of 10 years. The carpeting in the rental unit was 2.25 years old at the end of the tenancy. Therefore, I find the landlord entitled to recover the remaining 7.75 years out of an expected life of 10 years which I calculate to be an award of \$2,178.63 [$\$2,811.13 \times 7.75/10$ years].

Floor paint

This claim was undisputed and I found it to have merit. Therefore, the landlord is awarded \$107.21 to seal the floor on the lower level as requested.

Flea treatment

The tenant was agreeable to paying for flea treatment if in fact it had been done. The issue was that the receipt or invoice had not been included in the landlord's evidence package.

I found the vast majority of the landlord's claims were supported by receipts and invoices and I found the landlord's submission to be credible. Accordingly, I accepted the landlord's verbal testimony that \$315.00 was incurred to treat the rental unit for fleas in the few days that followed the end of this tenancy and I grant the landlord's request to recover this amount from the tenants. As a courtesy, the landlord may wish to send a copy of the receipt and/or invoice to the tenants to show them the amount paid.

Vent cleaning

As indicated previously in this decision, there is no exemption to a tenant's obligation to leave a rental unit reasonably clean at the end of the tenancy. As it was undisputed that there was pet hair in the vents and the tenants had multiple animals in the rental unit, I find the landlord entitled to recover vent cleaning costs from the tenants. However, I note that the vent cleaning was performed by the landlord's agent at a rate much greater than the house cleaners were paid. Therefore, I limit the award for vent cleaning to the same hourly rate charged by the house cleaners for an award of \$30.00.

Other claims

Except for the filing fee, the costs to prepare for and participate in a dispute resolution proceeding are not recoverable from the other party under the Act. Accordingly, the landlord's requests to recover the costs to develop photographs, serve the tenants and time spent preparing for the dispute are not recoverable and are dismissed.

Since the landlord was largely successful in this application, I award the landlord recovery off the filing fee paid for this application. Although the landlord's amended its claim to exceed \$5,000.00 it appears from the Branch records that the landlord did not pay the additional filing fee. Therefore, I limit the landlord's recovery to the amount paid to the Branch, or \$50.00.

Security deposit and pet damage deposit

I authorize the landlord to retain the tenants' security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord with this decision.

Monetary Order

Based on all of the foregoing, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent – September 2015	\$1,900.00
Cleaning	160.00
Carpet cleaning	178.50
Carpet replacement	2,178.63
Floor paint	107.21
Flea treatment	315.00
Vent cleaning	30.00
Filing fee	50.00
Less: security deposit and pet damage deposit	<u>(1,150.00)</u>
Monetary Order for landlord	\$3,769.34

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and pet damage deposit and has been provided a Monetary Order for the balance payable of \$3,769.34 to serve and enforce upon the tenants.

The tenants' application was dismissed as the tenancy had since ended and the remedies they sought became moot.

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 08, 2015

Residential Tenancy Branch

