



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Marram Holdings Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF
 MNSD, MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenants. The landlords have filed an amended application seeking a monetary order for damage to the unit, site or property; for an order permitting the landlords 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 for a monetary order for return of all or part of the pet damage deposit or security deposit; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords.

Both tenants and an agent for the landlords attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other with respect to the evidence and testimony provided, 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

- Have the landlords established a monetary claim as against the tenants for damage to the unit, site or property?
- Should the landlords be ordered 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 landlords for return of all or part of the security deposit?
- Have the tenants established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for double the amount of the security deposit?
- Have the tenants established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlords' agent testified that this tenancy began on May 1, 2010 which reverted to a month-to-month tenancy after April 30, 2011. The tenancy ended on September 30, 2015. The landlords purchased the rental property in June, 2015 while the tenants resided there. Rent in the amount of \$2,222.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the tenants paid to the previous landlord a security deposit in the amount of \$1,025.00 which was transferred to the landlords and is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is an apartment in an apartment complex and a copy of the tenancy agreement has been provided.

The landlords purchased the rental unit and gave the tenants an option to pay the market amount of \$3,200.00 per month, but they refused, so the landlords served a 2 Month Notice to End Tenancy for Landlord's Use of Property. The landlord's father was going to move in. He pays \$3,500.00 per month but hasn't been able to move in because the landlords needed 2 months to get the rental unit fixed up. The landlord's father has sublet the unit for \$3,300.00 per month.

The landlord further testified that a move-in condition inspection report was completed by the previous landlord and the tenants, and a move-out condition inspection report was completed by the landlords and the tenants on September 30, 2015. The tenants' forwarding address was provided in writing to the landlords on that date and a copy of the inspection reports have been provided.

The landlords' application for dispute resolution claims a total of \$17, 476.13 and the landlords have provided a Monetary Order Worksheet setting out the following claims:

- \$41.23 for replacing burned out or missing light bulbs (receipts provided);

- \$112.00 to replace an LED light strip in the living room that was burned out at the end of the tenancy (receipt provided);
- \$301.15 to replace a broken kitchen cabinet door, which was split in the middle at the end of the tenancy (receipt provided);
- \$1,295.70 for cleaning the floors and the rental unit after the tenancy had ended;
- \$1,992.90 for repainting the entire rental unit;
- \$13,125.00 to strip the floor and apply the Epoxy resin and put on a finish;
- \$608.00 for replacing most of the baseboards at the end of the tenancy;
- \$6,000.00 for loss of rental revenue
- For a total of \$23,476.00.

The landlords' amended application seeks to amend the claim by increasing it from \$17,476.13 by an additional \$7,700.00 bringing the total claim to \$25,176.13, and abandoning any amount over the jurisdiction of the *Residential Tenancy Act*.

The landlord further testified that the floors of the rental unit were a mess, sticky, and the trim was grimy at the end of the tenancy and the floors had been assessed by multiple flooring specialists. The floors are concrete and were left yellow instead of white. The landlords obtained a floor scrubber which got most of the black grime out, but some was embedded in the side by the wall. The landlords were told by a floor specialist that they had to be stripped down to the concrete and would require applying an "epoxy resin," then apply a smooth micro topping, which is like paint. The floors in the entire unit had to be done. The landlords obtained a quote of \$12,500, plus GST, and have provided a copy. The landlords have not had the work completed because they couldn't afford it and had a temporary floating floor installed instead. The landlords claim \$13, 125.00 for the tenants' negligence.

The landlords have also provided an estimate for floor cleaning, cleaning the blinds, windows, trim, bathrooms, kitchen equipment and high dusting for \$1,295.70. The company that provided the quote couldn't get the floors cleaned, so the landlords only paid them \$589.00 for suite cleaning. The rental unit was left by the tenants with crusty debris on the sliding glass doors, and the appliances and windows all needed cleaning, as well as blinds and cabinet doors.

The landlords also had to paint the entire unit and are not certain but were told by the tenants that it was never painted during the tenancy.

The baseboards were damaged throughout the rental unit at the end of the tenancy and the landlords replaced 178 linear feet out of a total of 255 linear feet in the rental unit. The

landlords painted the ones that were not replaced. The tenants used an industrial cleaner which caused the floors and baseboards to turn yellow.

After the tenants moved out, the landlord's father was going to move in and because of issues with the damages, no one has resided in the rental unit for 2 months. Strata Council rules apply about doing the floors and the strata council needs 2 or 3 weeks to consider it before the landlords can even order material. Then it took another week and a half to install the floating floor. Market value is \$3,000.00 per month, and the landlords are claiming 2 months.

The landlord submits that the rental unit looked good with the tenant's furniture and art, but not when it was a bare unit, and seeks compensation as claimed as against the tenants.

The first tenant (ZP) testified that the tenancy lasted 5 ½ years, and at the end of the tenancy the tenants cleaned it thoroughly and have provided photographs. They filled and sanded picture holes in the walls, and denies using an industrial floor cleaner or de-greaser causing discoloration. The tenants had that solution in the home, but only used it in the parking lot. The tenant feels the landlords are trying to keep the security deposit for normal wear and tear. A real estate manager was also inside the rental unit taking photographs and said everything was clean. Also, the tenant referred to a text message from the landlord dated July 2, 2015 wherein the landlord said he was very happy with the condition of the rental unit, prior to asking the tenants to agree to a rent increase. The tenant also testified that when the move-out condition inspection report was completed, the parties walked around in their shoes and didn't talk about the floors. The tenants only agreed to the move-out condition inspection report because it showed no deductions from the security deposit, and the landlord told the tenants that they would get back to them about it. The landlords also told the tenants that if they didn't participate in the inspection, the tenancy would continue.

The second tenant (AP) testified that the landlords' claim is normal wear and tear. The landlords purchased the rental unit during this tenancy basically sight unseen, and now claims that the tenants have caused \$25,000.00 of damage for property that the landlord was only in twice. If the landlords wanted a brand new condo, they should have bought one. The tenants took care of the place and believe the landlords are being completely unreasonable. The previous property manager was in the building many times before, during and after the landlord purchased it, and saw it 3 days before the tenancy ended. A letter from that previous property manager has been provided and it states that the tenants did not damage the property, and it was in good condition. The landlords' claim is unfounded, and they ought to have completed an inspection when they took ownership.

The tenants claim double the amount of the security deposit and recovery of the filing fee, for a total claim of \$2,100.00.

Analysis

Firstly, with respect to the landlords' application, 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 *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate such damage or loss.

Further, any monetary award at arbitration must not put the landlords in a better financial situation than they would be if the damage or loss had not occurred.

I have reviewed the numerous photographs provided by the parties as well as the move-in and move-out condition inspection reports. The *Act* states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. The tenant testified that it was signed as agreed to because it didn't show any deductions from the security deposit. However, that is not the sole purpose of signing it. The report clearly states: "I agree that this report fairly represents the condition of the rental unit." That has nothing to do with the security deposit or any deductions from it that the landlords might claim.

Considering the inspection reports, I accept that the landlords have established the 4-part test with respect to light bulbs for \$41.23, replacing a broken kitchen cabinet door for \$301.15 and \$112.00 for replacing the LED light strip in the living room.

With respect to cleaning and replacing the flooring throughout the rental unit, the condition inspection report shows that at the beginning of the tenancy the floors in the suite were in good condition, white concrete and easily marked/scratched. I also note that the floor in the living room, dining room and kitchen were marked up at the beginning of the tenancy, and the bedroom floors were marked and scratched or bubbled. I am not satisfied that the landlords have established that the damage or loss exists as a result of the tenants' failure to comply with the *Act*, and I dismiss that portion of the landlords' application.

With respect to painting the rental unit, I refer to Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements which puts the useful life of interior paint at 4

years. This tenancy lasted in excess of 5 years and was not painted during that time. Therefore, I find that any painting required at the end of the tenancy is normal wear and tear.

The condition inspection reports show that the cleaning required at the end of the tenancy was on walls and floors. Having found that the landlords are responsible for painting and have not established a claim for the floors and have replaced them with temporary flooring, I fail to see how the tenants can be held responsible for washing walls and the floors. However, the reports also indicate that the window sills, window coverings, sliding doors and perhaps the range needed cleaning at the end of the tenancy. The landlords' agent testified that the company that provided the quote couldn't get the floors cleaned, so the landlords only paid them \$589.00 for suite cleaning. However, neither the quote, nor the landlord's testimony have broken down the amount for the window sills, coverings, sliding doors or the range. The quote specifies cleaning blinds, windows, windows/doors trim, 2 washrooms, kitchen equipment and high dusting. I am not satisfied that the amount of work for cleaning window sills, coverings, sliding doors and perhaps the range cost the landlords \$589.00. A tenant is not required to leave a rental unit in a pristine condition that a landlord may want for future tenancies, but is required to leave a rental unit reasonably clean except for normal wear and tear. The evidence of the landlords has not established element 3 in the test for damages.

With respect to the landlords' claim of \$608.00 to replace baseboards, nowhere in the move-in or move-out condition inspection report are baseboards mentioned. There is no evidence before me to satisfy me what the condition of them were at the beginning of the tenancy, nor do the landlords know. I find that the landlords have failed to establish element 2 in the test for damages.

With respect to the landlords' claim for loss of rental revenue, the tenants paid rent in the amount of \$2,222.00 per month, not \$3,000.00 per month as claimed by the landlords. Further, the landlords' agent testified that the rental unit is being paid for by the landlord's father, who pays \$3,500.00 per month and sublets the rental unit for \$3,300.00. I see no loss of rental revenue, and the landlords' application in that regard is dismissed.

With respect to the tenants' claim for recovery of the security deposit, the *Act* requires a landlord to return a security deposit in full to a tenant or apply for dispute resolution claiming against the security deposit within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the parties agree that the landlords received the tenants' forwarding address in

writing on September 30, 2015. The landlords made the application for dispute resolution on October 14, 2015, clearly within the 15 days. Therefore, I find that the tenants are not entitled to double the amount of the deposit.

Having found that the landlords are owed for light bulbs in the amount of \$41.23, replacing a broken kitchen cabinet door for \$301.15 and \$112.00 for replacing the LED light strip in the living room, for a total of \$454.38, and the landlords hold a security deposit in the amount of \$1,025.00, I set off those amounts and I grant a monetary order in favour of the tenants for the difference in the amount of \$570.62.

The tenants did not lead any evidence with respect to the application for an order that the landlords comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the application.

Since both parties have been partially successful with the applications, I decline to order that either party recover the filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$570.62.

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: February 12, 2016

Residential Tenancy Branch

