



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CHERRY CREEK PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNSD, FF

Introduction

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

- a monetary order for damage to the rental unit;
- authorization to retain all or a portion of the tenants' security deposit and pet damage deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenants pursuant to section 72.

Both tenants appeared. The landlord's agent appeared. The parties 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.

The tenants admitted service of the dispute resolution package.

Preliminary Issue – Amendment to Application

The agent informed me at the beginning of the hearing that both individuals named as "landlords" were employees of the corporate landlord and at all times acted in their capacities as agents for the landlord. The agent asked to remove the individuals as named parties leaving only the corporate landlord as the applicant. The tenants did not oppose this amendment. I permitted the amendment to remove the named individuals as landlord. This amendment is reflected in the style of cause.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for damage and loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit and pet damage deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

This tenancy began 1 July 2014 and ended on or about 31 August 2015. Monthly rent in the amount of \$800.00 was due on the first. The landlord continues to hold the tenants' security deposit in the amount of \$400.00 and pet damage deposit in the amount of \$400.00, which were collected 7 June 2014.

The tenant LR testified that the landlord's agent B conducted an inspection with the tenants when they began occupying the rental unit, but that no condition inspection report was created. The tenants testified that they believed that this inspection was the official inspection. The tenant LR and the landlord's agent CW conducted a condition inspection on or about 14 July 2014. The agent CW did not provide testimony as he is deceased. The agent does not have personal knowledge of the condition of the rental unit at the beginning of the tenancy as she was not yet in the landlord's employ. The tenant LR testified that she felt intimidated by the agent CW and signed the condition move in inspection to get him to leave. The tenant LR testified that CW was a very intimidating man and that LR regrets signing the report.

On 30 July 2015, the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use (the 2 Month Notice) to the tenants. The 2 Month Notice set out an effective date of 30 September 2015. The parties agree that the tenants provided verbal notice to end the tenancy effective 31 August 2015. The tenants did not pay rent for August 2015.

The parties agree that on or about 26 August 2015 the parties intended to meet to conduct a condition move out inspection. The tenants testified that they were two minutes late and the agent CW had already left the rental unit. The tenants discovered a note from the agent CW and went to the landlord's office to attempt to find him. The tenants testified that discovered the landlord's office was closed. The tenants and the

agent CW spoke by phone and arranged for a second time for the inspection to occur on 28 August 2015.

The parties agree that on 28 August 2015 the parties met, but that no condition inspection report was created at this time. The agent testified that the report was not created at this time as the rental unit was in very poor condition and the landlord wanted to give the tenants until the end of the month to bring the unit into compliance in order to receive their security or pet damage deposit back. The tenants say that the inspection ended abruptly because the agent CW discovered damage to the downstairs carpet. The agent testified that the parties were given multiple other opportunities to meet to conduct the condition inspection report. The agent testified that her telephone calls to the tenants went unanswered.

The agent testified that she attended at the rental unit on 1 September 2015 to conduct the condition inspection on her own. The agent testified that the photographs which have been provided as evidence were taken on that date. The agent testified that on that date she found the rental unit vacant, but dirty, debris strewn about the back yard and carport, and damage to the carpet. The agent testified that the urine smell in the rental unit was overpowering. The agent testified that she left messages for the tenants to remove their belongings, but they did not.

The tenant LR testified that she did not believe that it was in her best interest to return to the property. The tenant BR testified that he felt insecure about going back to the rental unit to retrieve the yard debris.

The agent testified that the only actual outlay the landlord incurred was for the removal of the camper in the back yard (\$180.00) and repairs to the backyard (\$112.50). The agent testified that the remainder of the claim is a proxy for the loss in value on the sale of the rental unit. The agent testified that the owner of the rental unit sold the residential property on an "as is" basis, but estimates that the price was lowered by as much as \$10,000.00 because of the damages caused by the tenants. The agent was not aware of the listing price or selling price. The tenant LR testified that the reason landlord lost \$10,000.00 on the sale of the property was because the tenants informed the purchaser of damage that occurred to the residential property as a result of a fire.

The tenant LR testified that the prior occupants had vacated the rental unit only two or three days prior to the tenants beginning their occupancy. The tenant LR alleges that the prior occupants had not completed any cleaning and that their dog had urinated on the carpet. The tenant LR alleges that the agent B said that the carpets were going to be replaced. The tenants testified that they asked the agent B to keep the old carpets in

so that the tenants would not have to worry about their dogs damaging new carpets. The tenant LR testified that she had the carpets shampooed several times. The tenant LR admits that the carpets may have gotten worse while the tenants occupied the rental unit.

The tenants allege that on or about 19 August 2015 the realtor put a lockbox on the rental unit and that third parties had access to the rental unit. The tenants submit that the condition of the rental unit deteriorated in the two weeks in which third parties had access. The tenant LR testified that she felt bullied and that the tenants had no control.

The tenant LR testified that the tenants cleaned the rental unit to the best of their ability. The tenant LR did not admit that the kitchen food debris was the sort of dirt someone would accidentally track in. The tenant LR denied that there was any dirt in the kitchen and denied not washing down the walls. The tenant LR testified that she believed that CW wanted to “hurt” the tenants and submitted that the photographs do not show the whole story. The tenant LR testified that the dirt in the bathtub was because of ceiling work. The tenant BR testified that the staining was the result of water deposits.

The landlord provided photographs in support of its application. The photographs show:

- stained and dirty carpets;
- frayed carpeting;
- unclean fixtures;
- dirty cupboards;
- dirty appliances;
- pet hair;
- marks on the walls;
- debris in the carport and storage area;
- debris in the backyard; and
- dog waste in the backyard.

The landlord claims for \$1,103.63:

Item	Amount
Camper Removal	\$180.00
Yard Clean Up	112.50
Cleaning	294.00
Carpet Cleaning	385.88
Ozone Treatment for Urine Smell	131.25
Total Monetary Order Sought	\$1,103.63

Analysis

Extinguishment

Both parties' evidence indicates possible extinguishment by the opposing party. The tenants' evidence indicates that the landlord did not complete a report at the end of the inspection on 28 August 2015. The landlord's evidence indicates that the tenants did not attend an inspection on 1 September 2015.

Section 35 governs landlords' and tenants' responsibilities at the end of a tenancy in respect of the condition inspection:

- (1) The landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit
 - (a) on or after the day the tenant ceases to occupy the rental unit, or
 - (b) on another mutually agreed day.
- (2) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (3) The landlord must complete a condition inspection report in accordance with the regulations.
- ...
- (5) The landlord may make the inspection and complete and sign the report without the tenant if
 - (a) the landlord has complied with subsection (2) and the tenant does not participate on either occasion, or
 - (b) the tenant has abandoned the rental unit.

On the evidence provided to me, I find that the tenants and landlord agreed to conduct the condition move out inspection on 28 August 2015. The landlord's agent did not complete the condition inspection report at this time. Subsection 35(5)(a) of the Act does not apply to the report created on 1 September 2015 as the tenants did attend one of the scheduled inspections. I find that by failing to complete the condition inspection on 28 August 2015, the landlord breached subsection 35(3) of the Act.

Section 36 of the Act establishes the consequences for landlords' and tenants' breaches of section 35 of the Act. Paragraph 36(2)(c) of the Act states that unless a tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord, having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance

with the regulations; however, paragraph 36(2)(c) of the Act does not preclude a landlord from making a claim for a monetary order for damage to the rental unit.

On the basis of paragraph 36(2)(c) of the Act, I find that the landlord's right to claim against the security deposit for damage to the rental unit was extinguished by the landlord's failure to complete a condition inspection report on 28 August 2015.

As the tenants attended the inspection at the mutually agreed to time on 28 August 2015, the tenants were not required to attend a second inspection.

Landlord's Damages

Subsection 37(2) of the Act specifies that when a tenant vacates a rental unit, the tenant must leave the unit reasonably clean and undamaged except for reasonable wear and tear. *Residential Tenancy Policy Guideline*, "1. Landlord & Tenant – Responsibility for Residential Premises" (Guideline 1) provides direction in determining what constitutes a breach of subsection 37(2) of the Act:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. ...

Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year.

...

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

The tenants admit that they left a camper and debris in the yard at the end of the tenancy. Pursuant to Guideline 1 and subsection 37(2) of the Act a tenant is responsible for removing all garbage at the end of the tenancy. The tenants testified

that they felt uncomfortable returning to the rental unit at the end of the tenancy because the relationship between the tenants and landlord's agent CW had deteriorated. This is an insufficient reason for failing to remove the garbage especially when the agent made attempts to coordinate with the tenants. I find that by leaving their belongings in the yard, the tenants breached subsection 37(2) of the Act.

By breaching subsection 37(2) of the Act, the tenants caused the landlord to incur the costs of removing the camper and debris in the backyard. The landlord provided receipts indicating that landlord spent \$180.00 to remove and dispose of the camper and \$112.50 to remove and dispose of the remaining debris. I find that the landlord has established the reasonable cost of its loss in the amount of \$292.50.

The landlord claims the cost of cleaning and mitigating animal odor from the rental unit. The tenants state that the condition of the carpet was similar to the beginning of the tenancy. The tenants allege that unknown persons caused the mess in the rental unit.

Section 21 of the *Residential Tenancy Regulation* (the Regulation) establishes that the condition move in inspection report is strong evidence to the state of the rental unit at the time the tenancy began. The tenants have not provided sufficient evidence to show that they were unduly coerced into signing this report. The condition move in inspection report did not note pet damage to the carpet. The tenants testified that the carpet was damaged at the beginning of the tenancy. As the report is strong evidence of the state of the rental unit at the time the tenancy began, I find that the tenants caused damage to the carpet; in particular, the tenants did not clean the carpets as required to remove dirt and pet stains at the end of the tenancy.

The landlord's photographs, in particular the kitchen, indicate that the type of mess that was left in the rental unit was the type created by living and cooking in the rental unit. In addition there was visible pet hair in photographs. On the basis of the photographic evidence provided by the landlord and on the basis of the condition inspection report created at the beginning of the tenancy, I find that the tenants breached subsection 37(2) of the Act by failing to cleaning the rental unit.

The landlord provided me with estimates for the cost of cleaning. The agent testified that the landlord did not actually incur outlays in respect of this breach as the rental unit was sold to the purchaser on an "as is" basis. The landlord submits that by breaching the Act the tenants caused a reduction in the sale price of the rental unit; however, no evidence of diminished value was provided other than the testimony (without further explanation or corroborating evidence) regarding the \$10,000.00 reduction.

Residential Tenancy Policy Guideline, “16. Claims in Damages” provides assistance:
An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury.

On balance, I find that the landlord incurred a diminishment in value as a result of the condition of the rental unit. The determination of the loss is complicated by the fact that ownership of the rental unit has transferred. The tenants should not escape their responsibilities under the Act and tenancy agreement merely because ownership has transferred. In this situation, the assessment of compensation is not a precise science and it cannot be reduced to a calculation. The landlord has provided estimates to assist with this determination totaling \$811.13. In consideration of those receipts and the photographic evidence, I value the loss at \$400.00.

As the landlord has been successful in its claim, I find that it is entitled to recover its filing fee from the tenants.

Return of Deposit Balance

The landlord has been awarded \$292.50 for the debris removal, \$400.00 for cleaning, and \$50.00 for its filing fee. The deposits retained by the landlord total \$800.00.

Residential Tenancy Policy Guideline, “17. Security Deposit and Set off” provides guidance in this situation:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the depositunless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

There is no evidence before me that indicates that the tenants' right to the security deposit has been extinguished as the landlord extinguished its right first. As there is a balance in the amount of \$57.50, I order that the balance of the tenants' security deposit shall be returned to the tenants forthwith.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$57.50 under the following terms:

Item	Amount
Pet Damage Deposit	\$400.00
Security Deposit	400.00
Offset Garbage Removal	-292.50
Offset General Cleaning Damages	-400.00
Offset Filing Fee	-50.00
Total Monetary Order	\$57.50

The tenant is provided with a monetary order in the above terms and the landlord(s) must be served with this order as soon as possible. Should the landlord(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 2, 2016

Residential Tenancy Branch

