Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rentals Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the unit, site or property and to recover the filing fee from the tenants for the cost of the application.

The hearing did not conclude on the first day scheduled and was adjourned to continue at the request of the landlord's agent. My Interim Decision was provided to the parties.

The agent for the landlord and one of the tenants attended the hearing on both scheduled dates, and the tenant also represented the other tenant. The tenant and the landlord's agent each gave affirmed testimony. The landlord also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses. No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenants for damage to the unit, site or property?

Background and Evidence

The landlord's agent (AT) testified that this fixed term tenancy began on August 1, 1982 and reverted to a month-to-month tenancy after the first 12 months, which ultimately ended on January 31, 2017. Rent in the amount of $950.00 per month was originally payable under the tenancy agreement, was raised from time-to-time and was set at $1,485.00 per month prior to the end of the tenancy, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants, and the landlord was successful in obtaining an order of the director, Residential Tenancy Branch allowing the landlord to keep a portion of it,

and the balance was returned to the tenants. The rental unit is a townhouse in a complex, built in 1982, and was new at the beginning of this tenancy. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that move-in and move-out condition inspection reports had been completed, and copies have been provided for this hearing. At the end of the tenancy the rental unit could not even be shown to prospective tenants due to the smell. The landlord replaced subfloors, repainted throughout, renovated the bathroom, replaced drywall and carpets as well as appliances in order to be able to re-rent. The rental unit couldn't be advertised for rent until the end of March or beginning of April, 2017.

The landlord believed the renovations would remove the odor, but the rental unit was re-rented commencing May 1, 2017 for rent in the amount of $2,000.00 per month, and the new tenants complained from the first day that they could not stand the cat smell. The new tenants had to move out and the landlord returned all rent paid by them. They had paid rent for May and June, 2017 and moved out on July 4, 2017.

The landlord's agents later found feces under the drywall and under the subfloor, and ripped out all walls, subfloors, stubs, joists, and had to reinstall temporary ones. Everything was replaced including carpets. Contractors have told the landlord's agents that there is nothing else the landlord can do, and the rental unit cannot be re-rented.

Several photographs have also been provided for this hearing appearing to be taken at various stages of the construction, and the landlord's agent testified that some were taken during the move-out condition inspection on January 31, 2017 and some while the new tenants were living there. The landlord's agent testified that she had been in rental unit during the tenancy and witnessed hoarding conditions. The top floor was used as a litter area for the tenants' cat. The tenants basically lived in the lower area. The rental unit was abused by the tenants and totally unreasonable, including a layer of cat hair about 2 inches thick.

The landlord has provided a Monetary Order Worksheet setting out the following claims:

- $18,455.00 for loss of rental revenue;
- $8,787.35 for contractors and material;
- $28,400.00 for the 1420 hours for the maintenance crew; and
- $100.00 for recovery of the filing fee.

The landlord's agent wrote on the move-out condition inspection report that damages in the amount of $935.00 was estimated, but testified that she is not a professional, and it was an estimate. The landlord claims the maximum under the *Residential Tenancy Act*, $35,000.00, and testified that a previous hearing did not include any of the claims in this application.

The landlord's first witness (EM) testified that at one point the landlord had to make a corporate decision. The rental unit cannot be fixed and the landlord may have to abandon it.

The landlord realizes there is a cap of $35,000.00 under the *Residential Tenancy Act,* but testified that the landlord's expenses well exceeded that so the landlord decided to absorb a lot of costs and/or losses. The landlord got receipts in place from contractors and crew and specialists just to find out there was nothing the landlord could do, so applied up to the maximum amount. The landlord was not able to come up with these costs within 15 days as required by the legislation in order to keep the security deposit, and has now made this additional application for damages.

The witness and the landlord's agent (AT) were hoping once carpets, underlay, subfloor and some drywall and paint were replaced the smell wouldn't come back but it did. The new tenants called crying. Air in the vents would cause increased odor and it continued to get worse. The landlord refunded their rent in June.

The landlord's second witness (MD) testified that he has been employed by the landlord company since July, 2012 as a health and safety manager, and is a practicing occupational hygienist and licenced building inspector as well as a licensed construction safety officer. In his current employment his prerogative for the property management company is to protect the health and safety of workers and tenants, and to look after the asset, being the building.

The witness was first alerted to the situation of the rental unit around July, 2016 and he inspected it within 48 hours. He found the condition to be far below the standard of the landlord's obligations and for the building. Even understanding the tenancy lasted nearly 30 years, it was not standard to find that the tenants had removed carpet and underlay in the upstairs portion of the rental unit and poured cat litter on subfloors. The witness is not sure how many cats the tenants had. The witness wasn't concerned with scratch marks on walls and window sills, but with acid in cat urine and fecal matter into subfloors and joists.

The witness saw semi-hoarding conditions and testified that the tenant told him that his wife had collecting challenges, and that they hadn't used the kitchen in over a decade. It didn't appear that the tenants had used other portions of the main floor or the upstairs level.

Over the last 10 months or so, other third party companies have attended the rental unit to complete a biocide treatment, an active enzyme to get rid of acid and cat odor. They offer money-back guarantee but due to extend of the contamination they couldn't do so. They treated unsuccessfully. All acids and fecal matter were in joists and subfloor of the structure and the rental unit is currently uninhabitable. Considering the cat litter found on the floor, the witness believes the damages to be caused by negligence of the tenants.

The entire structure now has to be torn down, but it's shared with another. The landlord will have to get permits and take down the entire building. The compensation sought by the landlord in comparison to the costs to rebuild is fractional.

The witness also testified that routine inspections of rental units are done by the general manager, and the witness only inspects when asked by the landlord or a tenant. Prior to the

end of the tenancy, the landlord's agents reached out to workers to help the tenants deal with the state of the rental unit, and gave the tenants printed and on-line resources about hoarding, living environment, and tried to be understanding considering the length of the tenancy.

The adjoining rental unit is also tenanted and the witness performed an ozone treatment in that rental unit which seems to have worked, and no complaints have been made since then.

The tenant testified that the tenants had 1 cat and 2 little dogs.

The tenant further testified that there have been 65 or 66 managers employed by the landlord during this tenancy. The tenant had previously worked for the landlord company and while working at another complex, the tenant's wife called saying that police were at the rental unit. The manager at the time wanted to inspect the rental unit without notice to the tenant and said she was going in, but the tenant refused entry. The landlord's manager thought the tenant had a marihuana grow-operation, but the tenant allowed police to inspect. The tenant went everywhere with the police and there was no grow-operation and police told the landlord's manager that. The tenant went back to work but the manager met the tenant, said the tenant was doing a good job but he had to fire the tenant. The tenant was in his late 60s at that time and is now in his mid-80s.

The carpets in the rental unit were removed by a previous manager of the landlord, who "turned it into a drug growing place" and had 31 or 32 marihuana grow-operations. He was manager for about 5 years and turned any vacant units into grow-operations. Whoever was in charge was collecting more money, and no one was working in a health and safety capacity while the tenant was employed.

There was a terrible storm about a year or more prior and water poured in. Water was coming through the light fixture in the kitchen. The smell was not cat urine and there was no cat litter, but a commercial absorbent. Water had gone under the studs and the tenants had pots everywhere to catch incoming water. Two months later the eave troughs tore off having never been cleaned out, and poured water on the window which entered into the rental unit and caused another wet bedroom. The manager cleaned it up but never replaced the carpet. Gyprock also got wet and the manager took some off and applied new gyprock, but he didn't change the insulation and the tenant saw black mold. The landlord's agents knew that water went into the dining room ceiling.

Maintenance was nil on the landlord's part during the tenancy. The tenant gave up finding it useless to ask for anything. The tenant had asked for a light fixture and to have outside light bulbs replaced, but the landlord's agent told the tenant there was no money. The tenant has replaced the light fixture and the outside lights himself about twice per year. The landlord wouldn't replace carpets in other units the tenant worked in.

The tenant also denies some of the landlord's claims, such as a work order with the cost of lunch on it as well as tool repairs, car wash, for repairing a tool, and tuning up a truck.

Further, the parties have already been to Arbitration and on November 22, 2017 there was a final and binding Decision concerning carpets and doors.

Analysis

Where a party makes a monetary claim against another party for damage or loss, 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 any damage or loss suffered.

I have reviewed the photographs provided by the landlord, and I agree with the landlord's agent and witness that hoarding is a fairly accurate description of the condition inside the rental unit during the tenancy. I have also reviewed the move-in and move-out condition inspection reports, and the *Residential Tenancy Act* states that the reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I also note that at move-out, although a lot of items are marked as "dirty," a lot of items are also marked as "dirty and old." Old is not the responsibility of the tenant.

I find it particularly concerning that this 30 year tenancy involved 65 or 66 managers over that period of time. That was not disputed by the landlord's agent or witnesses. I further find it particularly concerning that no maintenance was completed by the landlord during that time, and the tenant had to replace a light fixture and outside lights, both of which are likely the responsibility of the landlord. The landlord's agents didn't dispute the tenant's testimony that the landlord company refused to replace carpets in other complexes owned by the landlord.

The compelling testimony, with no contest by the landlord, is a grow-operation of marihuana inside rental units and water damage. I find that to be more believable than cat urine to damage the rental unit to that extreme extent. It's not clear to me where the grow operations were, but that, as well as water pouring into the rental unit had far more likelihood of damaging the entire structure than a cat, but would very likely be a terrible odor. The tenant testified that the manager at the time tore out the carpets and some gyprock but didn't replace the carpet or insulation, and that the substance on the floor was not cat litter but a commercial absorbent due to the water pouring in. I don't doubt that there may have been cat urine and/or animal feces, but I find that the landlord's problem was far beyond that.

In the circumstances, I find that the landlord ignored the condition of the rental unit and the structure throughout this tenancy, and I am not satisfied that the landlord has established elements 2 or 4 in the test for damages, and the landlord's application is dismissed.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

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 05, 2017

Residential Tenancy Branch