



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 **MNDCL-S MNDL-S FFL**

Introduction

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

- A monetary order for compensation for damage or loss pursuant to section 67;
- Authorization to retain the security deposit in partial satisfaction of any monetary order pursuant to section 38; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 1:42 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlords, the witness and I were the only ones who called into this teleconference.

The landlords ('property manager landlord' and 'owner landlord') attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The property manager landlord testified she personally served the application for dispute resolution on December 20, 2018 at 6:45 p.m. at the tenant's new address. The service was witnessed by CT who was called to testify. The witness confirmed service on that date. In accordance with section 89 of the Act, I find the tenant was duly served with the application on December 20, 2018.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

Preliminary matter

In response to the RTB form 26 submitted on December 14, 2018, the owner was added as a landlord applicant to this dispute.

Issues to be Decided

Are the landlords entitled to:

- monetary compensation for being unable to occupy the rental unit?
- monetary compensation for damages to the rental unit?
- authorization to retain the security deposit and pet damage deposits in partial satisfaction of any monetary award?
- authorization to recover the filing fee for this application?

Background and Evidence

The landlords gave the following undisputed testimony.

The initial tenancy agreement with the tenant was for January 8, 2018 to April 30, 2018; the tenancy was extended to October 31, 2018 as noted on the tenancy agreement which was entered into evidence. Rent was \$1,250.00 per month, not including utilities. The landlord still holds in trust a security deposit in the amount of \$625.00 (received January 8, 2018) and a pet deposit of \$625.00 (received February 2, 2018).

On September 27, 2018 the landlord issued the tenant a notice to end tenancy for cause effective October 31, 2018 but didn't enforce the end of the tenancy. Instead, another fixed term tenancy agreement for the period November 1, 2018 to November 30, 2018 was entered into, provided as evidence by the landlord. A Mutual Agreement to End Tenancy document was also entered into evidence (form #RTB-8) with the same vacate date.

The tenant did not vacate until the following day, December 1, 2018. The tenant moved into another rental unit of the property management landlord after vacating the rental unit.

The landlord owner claims that the tenant's failure to vacate on October 31, 2018 and then again on November 30, 2018 prevented him from being able to end his own tenancy and the tenant should compensate him for \$2,200.00 in rent he was required to pay for November and December 2018. The landlord is also claiming \$2,200.00 for January 2019 rent as he claims the rental unit was not ready for occupancy until February 2019 due to the tenant's actions. The owner landlord's tenancy agreement was entered into evidence.

The landlord is also claiming for \$510.00 in storage fees for his belongings-- three months at \$170.00 per month. No proof of storage fees was entered into evidence.

The owner landlord testified he could not move into the rental unit until February 2019 due to the damage to the unit caused by the tenant. The owner landlord claims he is entitled to be reimbursed by the tenant for approximately \$1,400.00 per month in property ownership costs (comprising mortgage payment, natural gas and hydro electricity) for the months of December and January 2018.

A move-in condition inspection for the rental unit was conducted on January 12, 2018. A move-out condition inspection was conducted with the tenant on December 1, 2018 and the report was entered into evidence.

The following remarks were made on the move-out condition report:

*Under the heading bedroom #1: carpet badly torn & stains
Under the heading bedroom #2: smells like dogs
Owner unable to move in Dec. 1, 2018 due to tenant not being ready.
Owner incurring rental & storage costs etc. Urine smell in basement from
dogs peeing, bedroom carpets destroyed from dogs, dog feces under
snow? Cleaning charges 5 hours & stairs.*

The report is signed by the tenant who indicates he agrees the report fairly represents the condition of the rental unit. The section to record the cost of cleaning and repairs was left blank as is the area for the tenant's forwarding address.

The property management landlord testified she was aware of the tenant's forwarding address because the tenant moved into another one of the landlord's rental units. The landlords filed for dispute resolution to retain the security deposit on December 14, 2018.

The tenant was present while a cleaning was undertaken by a professional cleaning company on December 1, 2018; the final invoice was for \$143.00 (5.5 hours at \$25 per hour plus GST).

The landlords provided photographs of the damaged carpet indicating irreparable shreds and tears. An estimate of \$1,241.01 from a flooring company to remove the old carpet, install underlay and re-carpet the 2 bedrooms was provided as evidence. The landlord owner testified he paid that amount to have the work done. No receipt for payment was provided into evidence.

The landlords testified the tenant let his dogs urinate and defecate in the basement. No photographs were provided of the basement. The owner landlord testified he had difficulty in locating anyone to perform the work and ended up doing approximately 70%

of the work himself. The cost of the materials was not provided as evidence. An estimate of \$375.00 to repaint was provided.

The landlord provided an estimate to remove dog waste from the backyard for a fee of \$50.00.

The landlord owner testified he was not confident his house was secure after the tenant left and therefore had to change the locks to the house. A locksmith's receipt for \$197.19 was provided

Analysis

I find the tenancy ended at 1 p.m. on November 30, 2018 and the landlords gained possession of the rental unit on December 1, 2018. By not vacating the rental unit until December 1, 2018, the tenant was overholding for one day. Pursuant to section 57(3) of the *Act*, the landlords are entitled to one day of unpaid rent, or **\$40.32** (\$1,250.00/31 days).

The landlord signed the Mutual Agreement to End the Tenancy effective November 30th, choosing not to enforce the Notice to End Tenancy served on the tenant. There is no provision in the *Act* to compensate the landlord owner for his failure to enforce the end of the tenancy on October 31, 2018 since the landlord willingly agreed to end the tenancy on the later date. The landlord's claim for storage fees from October 31, 2018 to November 30, 2018 (\$170.00) as well as for compensation for the owner landlord's rental accommodations (\$2,200.00) is dismissed without leave to reapply.

The landlords did not provide compelling evidence to prove the rental unit could not be occupied by the owner landlord for the entirety of December 2018 and January 2019 due to the tenant's failure to comply with section 37(2) of the *Act*. Without leave to reapply, I dismiss the claims for rental accommodation and property ownership costs for December 2018 (\$2,200.00 rent, \$1,400.00 property ownership carrying costs) and January 2019 (\$2,200.00 rent, \$1,400.00 property ownership carrying costs).

I find the tenant did not comply with section 37(2) of the *Act*. The tenant did not leave the rental unit reasonably clean and undamaged except for reasonable wear and tear. The landlord provided compelling evidence as to the cost of cleaning the rental unit; replacing the damaged carpet; and cleaning the animal waste. The landlord is entitled to compensation of **\$1,434.01** (\$143.00 + \$50.00 + \$1,241.01).

The landlord owner did not provide compelling evidence as to the value of the damage to the basement as the work was mostly done by himself and no invoices were provided as to the cost of materials. I dismiss this portion of the claim without leave to reapply.

Section 25 of the *Act* requires the landlord to rekey or otherwise alter the locks and pay all costs associated with the change at the start of a new tenancy. Since the owner of the house is moving in, rekeying or changing of the locks is not an expense the tenant is responsible for and I dismiss this portion of the claim without leave to reapply.

Conclusion

Pursuant to section 67 of the *Act*, I find the landlords are entitled to a monetary award of \$1,574.33. Pursuant to section 38(4), I authorize the landlords to retain the tenant's security deposit and pet damage deposit in partial satisfaction of compensation owed for damages to the rental unit.

Item	Amount
Cleaning	\$143.00
Carpet replacement	\$1241.01
Overholding tenant (1 day rent)	\$40.32
Cost to clean animal waste	\$50.00
Filing fee	\$100.00
Less Security Deposit	(\$625.00)
Less Pet Damage Deposit	(\$625.00)
Monetary order	\$324.33

I have issued a formal order to the landlords for \$324.33. The landlord must serve this order to the tenant. Should the tenant fail to pay, the landlord may have the order enforced in the provincial court, small claims division.

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: April 10, 2019

Residential Tenancy Branch