



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1074277 B.C. LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNR, FF.

Introduction

The landlord applies for a monetary award for cleaning and repair of the suite after the tenants vacated as well as for loss of rental income during extensive cleaning and thirdly, for a month's rent claiming the tenants failed to give proper notice to end the tenancy.

All parties attended the hearing, the corporate landlord by its representative Ms. C.K., and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

The tenants submitted documents that Ms. C.K. said she had not received. They were composed of copies of her own documents and a few texts between the tenants and her at the end of the tenancy. It was determined that she would not be prejudiced or surprised by having to deal with those documents even though she may not have been formally served with them (a decision which was not made at this hearing).

Issue(s) to be Decided

Did the tenants leave the rental unit reasonably clean and free of damage but for reasonable wear and tear; the standard required by s. 37 of the *Residential Tenancy Act* (the "Act")? Are the tenants responsible for rental loss incurred while clearing or

repairing the rental unit? Did the tenants give the landlord proper notice to end the tenancy?

Background and Evidence

The rental unit is a motel room in a thirteen unit motel. It contained cooking and washroom facilities and was determined to be a rental unit in a prior hearing in which the tenants successfully applied to recover the \$500.00 security deposit money, doubled pursuant to s. 38 of the *Act* (see related file number shown on cover page of this decision).

The tenants moved in October 2017. The tenant Mr. C.H. had been hired to work on a deck at the motel and was given the motel room *gratis* during the work. The tenants stayed on afterward pursuant to an unwritten tenancy agreement at a monthly rent of \$1000.00. The tenants paid \$500.00 in deposit money.

The tenancy ended May 31, 2018. It is Ms. C.K.'s undisputed evidence that the tenants gave notice and left on the same day.

Ms. C.K. admits that no move in inspection was done and no report was made. She says no move-out inspection was performed either and no report was made. The tenant Mr. C.H. claims there was a move-out inspection but no report..

Ms. C.K. goes through a long list of repair and cleaning work done after the tenants left, caused mainly, she says, by the fact that the tenants smoked heavily inside the room despite the "no smoking" sign on the motel room door. She says the entire motel is a no smoking area. She says they smoked tobacco and marijuana in the unit.

Ms. C.K. recites the things in the rental unit that were affected by the smoke. She says the bed: headboard and mattress, were ruined as she could not get the smoke smell out of them. Similarly the walls and ceiling required cleaning then painting though they had been painted only a year before this tenancy. When the smoke leached out even after that, she had to apply "Kilz" and paint a second time. She says the appliances were stained in yellow that would not come off. The air conditioner was ruined by the smoke. She says the tenants' office chair on rollers destroyed the laminate flooring. The tenants left black scratches in the bathtub that required her to re-enamel the tub.

In all Ms. C.K presents receipts for supplies of around \$950.00 and claims that remediation of the motel room took two people 84 hours to complete. She seeks compensation for that work at the rate of \$20.00 per hour.

She presented a list of photos said to have been taken after the tenants left. Unfortunately the photos are in black and white and do not show the yellow discolouration at various locations that she complains of. They do not clearly show the soiled areas she claims were left by the tenants.

She says that the tenancy ended on May 31, 2018 when the tenants simply walked in, said they were moving and left the keys.

Ms. C.K.'s partner Mr. B.D. testified. He says the rental unit was unbearable because of the cigarette smoke residue and that it had to be completely "guttled". He tried to scrub the smell out but wasn't able to. He says they never inspected the room during the tenancy because the tenants had a pit bull type dog and they were afraid to enter. He noted that the tenants had taken the smoke detector down. He says it took three months to make the room habitable again.

Mr. C.H. testified for the tenants. He did not directly deny that the tenants smoked in the rental unit but he denies that it needed cleaning or repair. He says he and Ms. H. cleaned "top to bottom" but for the walls which were textured and therefore not easily cleanable. He indicates that he took pictures after cleaning. He did not file copies of any pictures of the rental unit.

He notes that Ms. C.K. and Mr. B.D. testify about having to apply "Kilz" between painting coats. He notes that the "Kiz" product is for mould eradication, not smoke eradication.

He says that he and Ms. C.K. went through the room after the tenants cleaned and Ms. C.K. told them they would get their deposit back. He presents a text between Ms. C.K. and him indicating that she had said she'd return the deposit at the move out inspection but changed her mind after talking to Mr. B.D.

Ms. C.K. denies doing a move out inspection with Mr. C.H. and says she had told him he would get his security deposit back after she checked the room.

Analysis

The landlord has put itself in a difficult position by failing to conduct a formal move-in and move-out inspection with the tenants and prepare a report on each occasion. Sections 23 and 35 of the *Act* impose an obligation on a landlord to conduct those inspections and prepare the related reports.

The purpose of the inspections and reports is to avoid disputes just like this one.

Having regard to all the evidence I cannot decide with any confidence what the state of the premises was at the end of the tenancy nor can I determine how it might have differed from the condition of the rental unit at the start of the tenancy. The objective evidence is scant or not persuasive. The testimony of the landlord's witnesses is not reconcilable with that of the tenant Mr. R.H. Each is believable and there is no reasonable basis to prefer one over the other.

In such a case the decision comes down to the burden of proof. In this dispute the burden of proof initially lies with the applicant to show, on a balance of probabilities, that its claim is justified. The applicant, the landlord in this case, has failed to meet that burden regarding its claim about the state of the premises at the end of the tenancy.

The landlord's claim for the cost of cleaning and repairs and its claim for loss of rental income while it remediated this rental unit must be dismissed.

The evidence does show that the tenants failed to give proper notice to end the tenancy. Section 45 of the *Act* required that a tenant who wished to end a tenancy give one clear rental period of notice in the case of a month to month tenancy. In this case the testimony of Ms. C.K. was uncontradicted that the tenants gave virtually one day's notice at the end of May. A notice given on the last day of May could only be effective at the end of June and so, on June 1, the tenants were responsible to pay the rent.

I award the landlord \$1000.00 for the rent for June 2018

Conclusion

The landlord is entitled to a monetary award of \$1000.00. As it has been only partially successful I authorize it to recover \$50.00 of the filing fee. It will have a monetary order against the tenants in the amount of \$1050.00.

The tenants previously obtained a \$1000.00 award against the landlord. At hearing it was stated that there has been no payment yet received from the landlord. If that is the case, then these awards offset each other, leaving \$50.00 owing by the tenants.

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: September 10, 2019

Residential Tenancy Branch