Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROADSTREET PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

In this dispute, the landlord seeks compensation for damage to the rental unit, against their former tenants, pursuant to section 67 of the *Residential Tenancy Act* (the "Act"). They also seek recovery of the application filing fee under section 72 of the Act.

The landlord applied for dispute resolution on February 20, 2020 and a dispute resolution hearing was held, by way of telephone conference, on April 30, 2020. The landlord's agent, a witness for the landlord (also an employee), and two tenants attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues regarding the service of evidence was raised by either party.

I have only considered evidence that was submitted in compliance with the *Rules of Procedure,* to which I was referred, and which was relevant to the issues of this application. As such, not all of the parties' testimony may necessarily be reproduced.

Issues

1. Is the landlord entitled to compensation for damage to the rental unit?
2. Is the landlord entitled to recovery of the filing fee?

Background and Evidence

The landlord's agent (hereafter the "landlord) testified that the tenancy began on December 1, 2018 and ended on January 31, 2020. Rent was initially $1,358.00, later increased to $1,391.00 by the time the tenants moved out. The tenants paid a security deposit of $679.00 and a pet damage deposit of $200.00, of which the entire amount is

held by the landlord. A portion of the security deposit ($270.00) was authorized by the tenants to be retained by the landlord for some damage to the walls of the rental unit. A copy of the written tenancy agreement was submitted into evidence.

On January 31, 2020, the tenant C.M. and the landlord conducted a walk-through inspection and completed a Condition Inspection Report (the "Report"). A copy of the Report was submitted into evidence. The Condition Inspection Report was also completed at the start of the tenancy.

When the tenant and the landlord did their walk-through, everything seemed fine. The landlord testified that "nothing was visible" on the carpet in the bedroom. I note that the rental unit is a one-bedroom apartment with carpeting only in the bedroom. However, the landlord noted a "strong cleaning odor," though this was not recorded on the Report. The parties signed off on the Report and the tenant left. It should be noted that the tenants had one, and then two, dogs. While the parties disputed whether it was a large dog or a small dog that was the culprit, they were in agreement that a dog in the rental unit had presumably caused the urine stains and resulting smell.

Later than evening, around 8 PM, the landlord returned to the rental unit and when she opened the bedroom door, she smelled the strong odor of urine coming from the carpet. She then "got down on the carpet and stuck my nose in there" to find out where the urine stains were, and then attempted to clean and sanitize those spots with vinegar. And when that didn't work, she used a cleaning product called Good Riddance. She opened up all the windows and left the apartment overnight. Returning the next morning, the smell had dissipated, most likely because the windows had been left open. She cleaned the rental unit some more and closed the windows. The urine smell returned. The landlord added that she smelled the scent of a strong deodorizer that the tenants presumably used before moving out.

Determining that no amount of cleaning, deodorizing or sanitizing would eliminate the smell of the urine, the landlord removed the carpet and replaced it. While they purchased "a giant roll," the portion used for the rental unit's bedroom and underlay installation came to $650.76. Copies of invoices for the carpet, and for the underlay installation, were submitted into evidence. In order to minimize eventual cost to the tenants the landlord (the agent herself) physically removed the carpet and underlay.

A witness for the landlord, J.C., testified that she witnessed the urine smell in the rental unit on the Saturday in question. "There was a pungent urine smell, it was quite apparent," the witness recalled. She added that, once a cleaned – and thus damp –

carpet dries, any hidden smells such as those caused by urine start to come out. Finally, she remarked that they applied deodorizer to the carpet in question, but “it didn’t work.”

The landlord referenced a letter from the current tenant in which it is stated that the current was inconvenienced for four days while the carpet was being installed.

In her testimony, the tenant C.M. stated that “everything was checked off” on the Condition Inspection Report and that there were no further issues (leaving aside the spackling work they had done to the walls, and for which they had agreed to the landlord retaining a portion of the security deposit). The tenant explained that they had the carpet professional cleaned about a week before they vacated the rental unit; the tenants had obtained another rental unit a month before and were in the process of having a slow move out over the month. She added that she “didn’t small anything when we moved out,” and that the carpet would have already been dry, as it was cleaned at least a week earlier. It is noted that within the Report, under the section for the bedroom, the column and box for carpets was checked off as “OK” in both the move-in inspection and the move-out inspection.

Both tenants (and the landlord) spoke about “puppy pads” and the accidents that can happen when dogs urinate, including the “dribbling” that may occur when dogs go pee. The tenant admitted that the dogs (“neither were more than 20 lbs”) may have urinated on the carpet, but not to the extent alleged. “We didn’t do this damage,” the tenants argued.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that if a party does not comply with this Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for any damage or loss that results. In this case, the landlord claims that the tenant did not comply with the Act, and that they should be compensated for this non-compliance.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities all four of the following criteria to be awarded compensation:

1. that the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement;
2. that the loss or damage resulted directly or indirectly from non-compliance;
3. that the applicant has proven the amount or value of the damage or loss; and,
4. that the applicant did whatever was reasonable to minimize their damage or loss.

Turning to the first criteria, subsection 37(2) of the Act states that "when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." A tenant who does not leave the rental unit in this condition is therefore liable, and it is a landlord who must prove that the tenant did not leave the rental unit in the required condition. The evidence of a tenant not leaving the rental in the required condition is almost always through the presentation of a move-in and move-out Condition Inspection Report, which is why they are so important and why they must be completed at the start and end of a tenancy.

Section 21 of the *Residential Tenancy Regulation,* B.C. Reg. 477/2003, states that

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

In this dispute, the Report states that the carpet in the bedroom was "OK" at the start and at the end of tenancy. The landlord did submit photographs of the carpet and the underlay stains, however, this does not, I find, prove causation between the tenants' dogs and the carpet stains (and smells). Such stains could have been caused by a previous tenant. And, while the landlord and her witness testified that the carpet smelled like urine, the tenants disputed this, and testified that they did not smell anything when they moved out.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim – in this case, the landlord – bears the burden of providing sufficient evidence over and above their testimony to establish their claim. And, as it relates to section 21 of the regulation cited above, there must be a preponderance of evidence. Here, I find that the landlord has failed to provide a preponderance of evidence that the tenants breached section 37(2) of the Act. I make note, too, that the tenants had the carpet professionally cleaned a

week before the inspection took place (a remark that was not disputed by the landlord) and find it rather peculiar that the carpet would be damp on the date of the inspection.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving that the tenants breached the Act. As such, I need not consider the remaining three criteria under section 7 of the Act. Accordingly, the landlord's application is dismissed.

The landlord is ordered to return $609.00 of the tenants' security and pet damage deposits to the tenants.

Conclusion

I dismiss the landlord's application without leave to reapply.

I grant the tenants a monetary order in the amount of $609.00, which must be served on the landlord, and which may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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

Dated: April 30, 2020

Residential Tenancy Branch