



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act of \$2,500.00; and to recover the \$100.00 cost of her Application filing fee.

The Landlord and the Tenant, J.B., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the fixed-term tenancy began on September 1, 2016, and ran to August 31, 2017, and then operated on a month-to-month basis. They agreed that the Tenant paid the Landlord a monthly rent of \$5,000.00, due on the first day of each month. The Landlord noted that during the tenancy, the rent rose to \$5,200.00. The Parties agreed that the Tenants paid the Landlord a security deposit of \$2,500.00, and a pet damage deposit of \$2,500.00. The Parties agreed that the Landlord returned the security and pet damage deposits to the Tenants at the end of the tenancy.

In the hearing, the Landlord explained her claim as follows. She said.

The first point is that he violated the tenancy agreement. In the tenancy agreement, it says the property would be rented to them and their son, only. When we went through the agreement, I let them know that I only paid insurance for one family in the unit. They were very clear that the basement suite was not supposed to be rented out. They said they would have visitors from time to time. They agreed to no one but their family.

In January 2020, when the rent cheques stopped or bounced, I applied for an equity line of credit. They sent someone to inspect, and they said they found a renter in the basement suite - loan denied.

When I asked [the Tenant], he said it was – see point 3 of my evidence – [the Tenant's] letter to the bank. He wrote to the bank and said these people were his parents and that they don't live there. We found out that his parents had lived there since 2018. My neighbour said they had been living there for years.

The Act states that if someone is staying for more than 14 days, they have to be added to the tenancy agreement. Now I'm paying for two families for both their utilities – doubled for years. I can't afford all of that. The tenants had violated the first point – the tenancy agreement.

In the tenancy agreement submitted by both Parties, clause 11 states:

11. OCCUPANTS AND GUESTS

- 1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
- 2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight.
- 3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant with the tenant and may serve a noitice to end a tenancy. Disputes regarding the notice may be resolved through dispute resolution under the *Residential Tenancy Act*.

In one of her documentary submissions, the Landlord said that the appraisal company had said that there "...was a couple living in the suite who said they paid \$1300 rent." The Landlord said that she questioned the Tenant about this, and "...he said his parents were mere visitors and would be leaving soon."

I asked the Tenant, and he said that his parents did not pay him any rent to live in the basement suite.

I note the Landlord submitted evidence that was a piece of mail with the Tenant's parents' names, and which was addressed to a location in Newfoundland. This letter had a Canada Post mail-forwarding sticker which re-directed it to the Tenant's rental unit address.

The Tenant was offered the opportunity to comment on the Landlord's testimony periodically throughout the hearing, but he said he would rather save most of his comments of rebuttal to when he presented his evidence at once.

The Landlord continued, explaining her difficulty finding new tenants, after the residential property was vacated by the Tenants at the end of July 2020.

When I was trying to find new tenants, I had different families come through, but they couldn't deal with the smoke smell in the basement suite. A realtor said it's going to be a hard sell, because of the smoke smell. She recommended I hire a company called [PC] and they came through and did an assessment. I included in #9 – July 29. [PC] came in and they did a report. It was what they would qualify as severe damage.

The cost they gave me to remove carpet and to paint: \$5,565.59 to do the work.

What I felt was reasonable is that I did the work myself. I'm just asking to recoup not even the full amount, but the security deposit. This wasn't supposed to be lived in, let alone incurring the damages of a smoking couple.

I still haven't been able to rent out the suite, it was so severe. I think [the Tenant], because he's been around smoking for so long in his life, he doesn't understand how sensitive people can be to the smell of smoke.

The Landlord then referred to a report she had submitted from the cleaning company that assessed the damage, [PC]. This report begins, as follows:

[PC] was called out to the above address to inspect for smoke odour removal of the basement suite. Upon arrival when we entered the suite, there was an obvious attempt to mask the smoke odour using air fresheners. The air freshener was very heavy and in about 20 minutes into the inspection, the back of our throat was getting "scratchy". The smoke odour was more apparent when opening the cabinet/vanity doors and sticking your head into cabinet. There was less masking in there and the odour was stronger. There are 2 steps we propose to deal with the odour. The first step is the most cost effective step, however, if the 1st step does not work, then we need to use the more aggressive 2nd step. Proposed 1st step:

Clean carpets and deodorize using an ozone machine and air movers for at least 24 hours. Ozone is a natural deodorizer and neutralizes odours quickly. We would place the ozone machine in the middle of the suite and use air movers to "blow" the ozone around into all of the rooms. As well, during the process, we would open all cabinet doors, drawers, closets, vanities, etc. This way the ozone gets into all of the areas. For the carpet cleaning, we would introduce a smoke odour neutralizer to counteract the smoke odour in the carpet. The neutralizer combined with the ozone treatment may be able to dramatically reduce the odour.

The Landlord continued:

Step one, they talk about the ozone machine and air movers; they did that, but it didn't work. They proposed step two, which was the big quote of \$5500.00. Now I'm just asking for that back. I'm asking for that back, because he lied to me, and he violated the tenancy agreement by moving people in.

I did the work myself, and I've included the receipts and [PC's] report.

I'm really disappointed to have been lied to for so long. You would think that letting his parents live here for two years, just the damage... the respectable thing to do....

The Tenant said:

I just wanted to address the concern of the sublet. I included Policy Guideline 19, which describes sublets. Me allowing my parents to live in the basement is not a sublet. My parents came to stay with me, because my Mom got sick.

What happened here is a case of additional occupants. Policy Guideline 13 says clearly, unless the tenancy agreement specifically prohibits additional occupants, they are allowed. Under the Act, that's completely permissible. The additional occupants – the clause in Policy Guideline 13 speaks to what happened here. If you look at the lease and the addendum, it says yard work, which is circled. Smoking is not. The addendum is quite granular – it talks about artwork to be move, furniture to be used, even what cable channels that are available – you don't see anything about subletting or smoking.

A landlord may not arbitrarily declare a residential property non-smoking. We could have been smoking morning, noon, and night. Nobody ever actually smoked in the house.

There was no smoking inside – it's a conversation between [the Landlord] and I after the first inspection - [the Landlord] and I agreeing to put air fresheners in.

She said: 'I see him smoking outside all the time, but maybe it seeps in.' It's a lie that I sublet to a couple – she knows it's my parents.

Clause H of Policy Guideline #13 ("PG #13") states:

H. OCCUPANTS

If a tenant allows a person to move into the rental unit, the new person is an occupant who has no rights or obligations under the tenancy agreement, unless the landlord and the existing tenant agree to amend the tenancy agreement to include the new person as a tenant. Alternatively, the landlord and tenant could end the previous tenancy agreement and enter into a new tenancy agreement to include the occupant.

Before allowing another person to move into the rental unit, the tenant should ensure that additional occupants are permitted under the tenancy agreement, and whether the rent increases with additional occupants. Failure to comply with material terms of the tenancy agreement may result in the landlord serving a One Month Notice to End Tenancy for Cause. Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant. .

[emphasis added]

The Tenant continued:

We took really good care of that house and she knows it. With regard to this supposed smoke damage, I am glad that she admitted that the [PC] didn't happen. I also submitted four pictures – the old back and the old front, and the new back and new front. They show the house from marketing materials to sell us the house. If you look at the old front – there's red hardwood. In the old back you can see tile in the dining room. If you look at new front and back pictures – the photos are from Expedia – as it's used as an AirBnB

There's new hardwood, no carpeting. All the walls were painted. The fireplace was renovated. There's a receipt for hardwood and paint – but it's for upstairs – it's used for AirBnB. It had nothing to do with the basement at all. Look at the date – October – we moved out in, in July. This isn't work done to the suite, but to prep the house for vacation rentals. The insurance policy is not a claim, it's a policy. This is an act of perjury and fraud.

The Landlord said:

The work was done, by the way, in August, September and October. What I did to the upstairs is completely separated – you can't renovate anything for \$2,500.00. I put in a lot of money on the upstairs, because I needed to rent it out.

In [the Tenant's] email to my bank, he said:

I am [Landlord's] tenant in the above mentioned property, and it was I who escorted the appraiser, [D.], on the tour of the property. I am the sole lessee of the property and rent is set at \$5200/month. I explained this to

[D.] on the tour, specifically mentioning the rent and the fact that though my parents happened to be in our suite at the time, they were not tenants, merely visitors. I also mentioned to him that during the summer when my In-Laws visit, they also stay in the suite as we use the basement as a guest house. We are from Ontario originally, hence my 613 area code still, and enjoy having fully separate guest quarters when we have family visit.

I cannot explain why he provided information that is inaccurate and completely contrary to our conversations; if you would like to speak with me about the tour or about the property, please do not hesitate to call.

I asked him many, many times in the tenancy. I said no one can live in the suite - my insurance won't cover it, if it's a two-family dwelling. They had someone living down there; he did it without authority - I paid all of their bills, and they cause smoke damage. They came in [PC]. He admitted that people won't stay in the suite because of the smell.

I have new flooring and new paint. There were damages, and I'm claiming for damages. If you cause damage to the house, you will have to pay that back. I gave him the damage deposit back, and waited. He's playing the system - leaving without a forwarding address - I had to hire skip tracers. He goes on to say that he could have as many people here and smoke as much as he wants. How can you even say that? I didn't have renters here until the end of December, after fixing the damage. We had to rip the carpet out and paint the walls. He said they aren't even tenants - that they're just mere visitors. I could make another application for the utilities I paid for two years.

I circled it on the tenancy agreement, because I don't rent to smokers. The insurance charges extra for that.

He has been manipulating the situation and me all this time. The damages were caused by his tenancy. He's thinking it's okay to call people names and misuse them. That shouldn't be allowed. I had three different groups of potential renters come through, and they wouldn't rent it. There's rent loss there, too.

The Tenant said:

Why are there not before and after pictures of the basement? But I have photo evidence that the whole house was renovated.

The Landlord said:

We're looking at the damages to the basement suite, not the upper suite. I didn't need to submit before and after pictures, because it's about the work that was done, the receipts.... What I did upstairs.... I'm not asking for the full amount back, just the damage deposit.

I offered the Parties the opportunity to make any last statements they had. The Landlord said:

I'd like to reiterate that there's the four conditions, and the burden of proof, and I feel I've done more of that. The Tenants violated the agreement, they violated my house, they violated me. He admits he moved his parents in. He even told me and my bank that they were just visitors. That's all a violation.

Point two: damages and loss – the assessment – the value is proven, as well. He fully admitted that potential tenants smelled the smoke and didn't take it, because of that. There's the rent loss, but I'm not asking for that. If there is any damage caused – this would be the remuneration. I'm not asking the quoted amount, or utilities, or the lost rent; I'm just asking for the damage deposit back for what damages were caused by his family that he moved in, and they were smoking and they caused damage

See his email to the bank. He knows I didn't agree to what he wrote. It is a gross violation of the agreement we had. Focus on the facts and not the name calling; [the Tenant] likes to do that.

The Tenant said:

I won't go back through everything. I would like the minimum threshold for this proceeding. In no way did we violate the Act or the tenancy agreement.

Policy Guideline 13, part H says: 'Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit.'

We didn't sublet per Policy Guideline 19 and the addendum to the lease. My Mom ended up with Alzheimer's and dementia, and we moved them in and that's all I have to say.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I said that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. RTB Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

(“Test”)

The Landlord is asking me to accept that the Tenant allowed his parents to live in the downstairs suite of the rental unit for over two years, and that an odour of smoke was present in the basement suite, as a result, at the end of the tenancy. The Tenant did not deny that his parents were living in the downstairs suite, as he said he moved them in there, because his mother suffers from Alzheimer’s and dementia, and that his father could no longer handle her care alone.

I also find that there is sufficient evidence before me, including the restoration company evidence, to conclude that the Tenant’s parents, or at least his father, smoked in the downstairs suite. I find it odd that an independent appraiser with no interest in the property would provide false information about what he was told by the couple he met in the basement suite of the residential property. Why would the Tenant not tell the appraiser that it was his parents there for a short visit, if that were the case? If the Tenants’ parents were the ones living in the basement suite, why would they tell the appraiser that they were living there and paying \$1,300.00 in rent, if they were not? Why would the Tenant’s parents have their mail forwarded from Newfoundland, if they had not moved to British Columbia?

All of these concerns raise questions in my mind about the reliability and credibility of the Tenant’s version of events. However, I find that the Landlord did not provide sufficient evidence that smoking or other occupants were not allowed in the residential

property. While the Landlord may have given the Tenants verbal instructions in this regard, the parol evidence rule is a common law rule in contract that prevents a party to a written contract from presenting extrinsic evidence (usually oral) supplementary to a pre-existing written instrument. The purpose of the parol evidence rule is to prevent a party from introducing evidence of prior oral agreements that occurred before or while the agreement was being reduced to its final form in order to alter the terms of the existing contract.

As such, I find that the tenancy agreement does not contain binding clauses prohibiting smoking or allowing other occupants in the basement suite of the residential property. However, section 37 of the Act states that a tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the Tenant left the residential property with a noticeable odour of smoke in the basement suite, and that this was not normal wear and tear.

Further, as noted above, PG #13 states:

Where the tenancy agreement lacks a clause indicating that no additional occupants are allowed, it is implied that the tenant may have additional occupants move into the rental unit. The tenant on the tenancy agreement is responsible for any actions or neglect of any persons permitted on to the property by the tenant.

Accordingly, I find that the Tenants are responsible for the damage his parents caused in the residential property due to smoking in or near the basement suite. I find that the Landlord has minimized the damage she incurred by claiming only the security deposit amount, rather than the full costs she bore in trying to remedy the damage.

I find that the Landlord has met the burden of proof in the Test, by establishing that:

1. The Tenants violated section 37 of the Act by not leaving the residential property reasonably clean, and undamaged;
2. This violation caused the Landlord to incur damage or loss, as a result – the cost to remove the smoke odour was not insignificant;
3. The Landlord has established that the cost to clean the residential property of the smoke odour was at least \$5,565.59; however the Landlord has claimed only \$2,500.00 of the cost she incurred;
4. The Landlord minimized the cost to her in not claiming the full amount she paid to have the residential property brought to a level of reasonable cleanliness.

I, therefore, award the Landlord with recovery of **\$2,500.00** from the Tenants, pursuant to section 67 of the Act, as compensation for the monetary losses she incurred, because of the Tenant's actions.

I also award the Landlord with recovery of the **\$100.00** Application filing fee from the Tenants, pursuant to section 72. I grant the Landlord a Monetary Order of **\$2,600.00** from the Tenant, pursuant to sections 67 and 72 of the Act.

Conclusion

The Landlord is successful in her Application for compensation from the Tenants, as she provided sufficient evidence that the Tenants allowed occupants of the residential property to cause smoke damage to the basement suite of the residential property. The Landlord is also awarded recovery of the \$100.00 Application filing fee from the Tenants.

I grant the Landlord a monetary order of **\$2,600.00** from the Tenants in this matter. This Order must be served on the Tenants by the Landlord and may be filed in the Provincial Court (Small Claims) 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 27, 2021

Residential Tenancy Branch