



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding CAPILANO PROPERTY MANAGEMENT SERVICES
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

The landlord seeks compensation (by authorization to retain a portion of the tenants' pet damage deposit) pursuant to sections 38(4)(b), 67, and 72 of the *Residential Tenancy Act* ("Act"). A representative for the landlord, and both tenants, attended the hearing and were affirmed before giving testimony.

Issue

Is the landlord entitled to compensation?

Background and Evidence

In order to be successful in an application under the Act, an applicant must prove their case on a balance of probabilities. While I have considered all of the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

The tenancy began on October 1, 2018 and ended on April 30, 2022. Monthly rent was \$1,664 at the time the tenancy ended and there was an \$800 security deposit (which was returned to the tenants) and an \$800 pet damage deposit. The pet damage deposit is being held in trust by the landlord pending the outcome of this application.

There is a written tenancy agreement (signed by both tenants) in evidence, along with two copies of a two-page addendum to that tenancy agreement. One tenant signed one copy of the addendum and the other tenant signed the other copy.

Term 5 of the addendum states, *inter alia*, that

[. . .] An inspection of the premises for the presence of fleas must be completed by a professional pest control company, at the sole cost of the Tenant, upon or earlier of the pet or the Tenant vacating the premises. The Tenant must provide a copy of the flea inspection report to the Landlord or Agent, which report must clearly state whether or not there are fleas present in the premises. [. . .]

The landlord testified under oath the tenants were permitted to have a cat during the tenancy. However, the tenants did not arrange to have the required inspection completed and the landlord had to undertake the inspection itself. It engaged a flea inspection service and incurred a cost of \$210.00. This is the amount (not including the application filing fee) that the landlord seeks in compensation. An invoice, and the associated report, for this amount is submitted into evidence.

The tenants testified that because their cat is a special pedigree cat it is never permitted outdoors. It was not even allowed out onto the tenants' fifth-floor balcony. For the cat's health it must remain indoors at all times. The tenants submitted into evidence a copy of a veterinarian's report dated March 30, 2022 which indicates that the "cat was examined and to be found with no parasites/fleas." Moreover, the tenants argued that, because the cat is an indoor-only type of cat that would not have fleas, the obligation to produce a report (as required under term 5) was unnecessary.

The landlord responded by submitting that even if the cat remained indoors ninety-nine percent of the time, there remained a small risk that an outside guest could carry fleas into the rental unit. And, despite the tenants' remarks about the building manager being "okay" with the cat and perhaps being ambivalent about the need for a report, the addendum is in writing and the terms are clear. He argued that the tenancy agreement and the addendum were a contract between the parties and therefore the tenants were obligated to comply with the terms of that contract.

Analysis

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A party claiming compensation must do whatever is reasonable to minimize their loss.

The tenancy agreement's addendum's term 5 is clear: a tenant who has a pet must have a professional pest control company produce a report at the end of the tenancy setting out than examination of the rental unit was completed.

The tenants signed the addendum and as such accepted the terms and obligation as set out in the addendum. But for the tenants' decision not to comply with tenancy agreement's requirements the landlord would not have incurred a loss in the amount of \$210.00 to have a report done. Moreover, the flea inspection was undertaken by a professional pest control company and the amount claimed appears reasonable.

It is not lost on me that the special type of cat owned by the tenants is, practically speaking, likely not one to run a significant risk of catching and hosting fleas. Indeed, the landlord-commissioned flea report for the rental unit confirms this. However, the landlord's argument that fleas can be carried into the property by outsiders or guests is a risk that must be considered. As such, ensuring that a rental unit is confirmed to be flea-free for the incoming tenants is a reasonable term of the tenancy agreement.

Taking into consideration all of the evidence before me, it is my finding that the landlord has proven on a balance of probabilities their claim for compensation in the amount of \$210.00. Pursuant to section 67 of the Act the tenants are ordered to pay this amount to the landlord. Because the landlord was successful in its application the landlord is entitled to recover the cost of the application filing fee under section 72 of the Act.

Pursuant to section 38(4)(b) of the Act the landlord is authorized and ordered to retain \$310.00 of the tenants' pet damage deposit in full satisfaction of the amount awarded. The balance of the pet damage deposit (\$490.00) is ordered to be returned by the landlord to the tenants within 15 days of the landlord receiving this Decision.

Conclusion

The application is granted.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 31, 2023

Residential Tenancy Branch