



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION AND REASONS

Dispute Codes: MND, MNDC, MNSD, & FF

Introduction:

This hearing dealt with the landlord's application for a monetary claim due to damage to the rental unit and a request to retain the tenant's security deposit plus interest in partial satisfaction of this claim. Both parties attended the hearing, provided affirmed evidence and had the opportunity to respond to the evidence presented by the other party.

Issues to be Determined:

Has the landlord established a monetary claim related to damage to the rental unit?
Does the landlord have the right to retain the tenant's security deposit plus interest?

Background and Evidence:

This tenancy began on November 1, 2004 for the monthly rent of \$1,400.00 and a security deposit of \$700.00. The tenancy ended effective October 31, 2008 after the tenant received a two month Notice to End Tenancy for landlord's use of the rental unit. The tenancy also ended due to a complete deterioration of the landlord and tenant relationship arising out of repairs that were being completed to the rental unit.

The landlord claims that the tenant has damaged carpets in the rental unit beyond normal wear and tear. The landlord claims that as a result of this damage the carpets had to be replaced. The landlord is seeking costs to dispose of the carpet and all the replacement costs. The landlord submitted the carpeting had heavy staining throughout, burn marks and damage to the underlay and sub-flooring due to pet urine. The landlord submitted that the tenant had a cat and a dog. The landlord stated that the carpets had been newly installed approximately 4.5 years previously.

In support of his claim for damage to the carpet the landlord provided evidence from witnesses who attended the rental unit on October 31, 2008 for the move-out inspection. One witness, referred to as GL, testified that when he entered the rental unit there was an overpowering smell of urine and wet carpet. He stated that the carpets were in deplorable shape with spotting and staining throughout. He also commented on the large blue coloured stain on the master bedroom carpet.

The landlord also provide sworn statements from other witnesses who had direct knowledge of the condition of the rental unit prior to this tenancy starting and viewed the rental unit at the end of the tenancy. These three statements all state that the carpeting was undamaged at the start of this tenancy.

The landlord also claims expenses of \$300.00 related to cleaning of the rental unit. The landlord submits that the tenants failed to properly clean the rental unit including kitchen floors, behind and underneath the fridge and stove and removing debris.

Finally the landlord requests the sum of \$126.00 to repair damage to the lawn of the property. The landlord claims that the tenant damaged the lawn when moving out and points to evidence of tire marks on the front lawn.

The landlord claims the total sum of \$7,039.07, including recovery of the \$100.00 filling fee paid for this application, as damage caused by the tenant.

The tenant disputes the landlord's claim, arguing that the landlord is retaliating due to the previous award she received on an application for dispute resolution due to the landlord's harassment. The tenant questions the validity of the amount claimed by the landlord for the cost of replacing the carpet, indicating that it is unreasonable.

The tenant denies the claims that the carpets were damaged due to pet urine. The tenant submitted that she cleaned the carpets repeatedly throughout the tenancy as she had access to a carpet cleaner. She also stated that the carpets had just been cleaned before the move-out inspection and that any smell detected was a result of the damp carpets.

The tenant also argued that the landlord failed to complete a move-in condition inspection at the start of the tenancy and therefore cannot establish the condition of the carpets at the start of the tenancy. The tenant also submits that the carpets suffered additional wear and tear due to dirt and dust coming into the unit during the extensive renovations completed by the landlord in the final months of the tenancy. The tenant has no knowledge of what caused the large blue staining in the master bedroom.

The tenant also provided evidence from internet searches suggesting that the type of carpet in the rental unit could be subject to greater wear and tear as it is a synthetic material. She submitted that simple actions, such as moving something across the carpet, could result in melting of the fibres.

The tenant submits that she cleaned the rental unit to a reasonable standard and did not clean behind the fridge and stove as she was unaware they could be easily moved. The tenant also denies the damage to the lawn and submits this damage was already done due to the construction as the landlord was renovating the outside of the rental unit.

Both parties submitted photographic evidence in support of their arguments.

Conclusion:

Section 1 of the *Residential Tenancy Policy Guidelines Manual* states in part the obligations of landlords and tenants respecting the care and maintenance of a rental unit as follows:

The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).

If the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. Where the landlord chooses not to return the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had.

Section 16 of the manual states in part:

The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

If a claim is made by the landlord for damage to property the normal measure of damage is the cost of repairs, with some allowance for loss of rent or occupation during repair, or replacement (less depreciation), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

One of the purposes a move-in and move-out condition inspection reports is to document the condition of the rental unit to assist parties in determining whether there has been damage beyond normal wear and tear. However, failure to complete a move-in or move-out condition inspection report does not mean that damages cannot be established.

In considering the evidence before me I am satisfied that the landlord has established that the carpets were in clean and good condition at the start of the tenancy. He provided sworn statements from witnesses who had personal knowledge of the condition of the rental unit and I accept that the carpets were approximately 10 months old at the start of the tenancy.

Although the tenant argued that she cleaned and maintained the carpets during the tenancy, including her argument that she cleaned the carpets repeatedly, I am not satisfied that the damage to the carpets is normal wear and tear or due to dirt and dust during the period that renovations were being completed. I find that the photographic evidence is persuasive in establishing that there was significant damage to the rental unit including staining and burn marks. I am satisfied that this damage was due to the tenant. I am also not persuaded by the tenant's arguments that the pre-existing carpet was of lesser quality or subject to a greater degree of wear and tear. I also find that the landlord's claim for the replacement is not unreasonable.

However, the landlord is not entitled to replacement costs that do not reflect depreciation. Carpets are generally considered to have a useful life of 10 years, meaning, they no longer hold any value after this time. The carpets in the circumstances before me were approximately 4.5 years old and as such would be depreciated by almost 50 percent. I accept that due to the damage caused by the tenant the landlord had to replace the carpets and I find that due to the tenant's damage the landlord is entitled to 50 percent of the total replacement cost from the tenant. However, the landlord did not provide an actual receipt for the cost to install the carpet. The landlord only provided a receipt for the cost of the carpet and the underlay, plus a receipt of the cost to remove and dispose of the old carpet. I only grant the landlord 50 percent of these costs. I grant the landlord the sum of \$2,561.17.

I also accept that the tenant did not properly clean the rental unit, as demonstrated in the photographic evidence. It is clear that the kitchen floors were not cleaned, including behind the fridge and stove. However, I am not satisfied that the landlord has established that the remaining cleaning could reasonably cost \$300.00 as claimed. I accept the evidence from the tenant, including the provided photographs, that the rest of the rental unit was cleaned to a reasonable standard. Therefore, given the minor cleaning to be completed and to repair the toilet seats, I award the landlord the sum of \$100.00.

I reject the landlord's claim for the cost to repair damage to the front lawn. While I accept that there is a tire mark which could have been caused by the tenant, I find it more likely than not that the lawn was already in a damaged state due to the construction of the rental unit. The lawn was used to store construction supplies and experienced significant wear and tear during this period.

I also grant the landlord's request to recover the \$100.00 filing fee paid for this application from the tenant. I find that the landlord has established a total monetary claim of \$2,761.17. Although the landlord extinguished his right to retain the tenant's security deposit by failing to conduct a move-in condition inspection report, I Order pursuant to section 72 of the *Act* that the landlord retain the tenant's security deposit plus interest against this established monetary claim.

From the sum of \$2,761.17 I Order that the landlord may deduct the sum of \$724.79, in partial satisfaction of this claim. I grant the landlord a monetary Order for the remaining balance of **\$2,036.38**. This Order may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion:

I grant the landlord's application for damages to the rental unit caused by the tenant.

Dated January 05, 2009.

Dispute Resolution Officer