



Dispute Resolution Services

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

Decision

Dispute Codes: MND, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage to the rental unit, damage or loss under the Act, regulations or tenancy agreement, retention of the security deposit and recovery of the filing fee. Both parties were represented at the hearing and had an opportunity to be heard.

Issue(s) to be Decided

1. Whether the landlord has established an entitlement to compensation for damage to the rental unit, or damage or loss under the Act, regulations or tenancy agreement, and if so, the amount.
2. Retention of the security deposit and pet deposit.
3. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony, I make the following findings concerning the tenancy. The tenancy commenced in February 2006 and ended November 30, 2008. The tenants had paid a \$900.00 security deposit and a \$100.00 pet deposit on February 1, 2006. A move-in inspection report was not completed at the commencement of the tenancy; however, the parties performed a move-out inspection and the tenant authorized the landlord to retain the security deposit and pet deposit for damages to the carpeting.

The landlord testified that the rental unit was approximately 8 years old and that the carpeting in the rental unit was likely the original carpet installed when the unit was constructed. The landlord testified that the tenants' cat(s) urinated on the carpets and that despite two carpet cleanings the urine odour was so strong that the incoming tenants had to be placed in alternative accommodation until the carpeting was replaced. The landlord was of the position that the urine stains were everywhere throughout the rental unit. The landlord submitted evidence that \$2,341.50 was paid by the landlord to have the old carpet removed and disposed, paint applied to the subfloor and new carpeting installed. The landlord also provided evidence that the incoming tenants were compensated \$500.00 for having to find alternative accommodation while the carpeting was being replaced. During the hearing, the landlord reduced his original claim to:

\$2,341.50 for carpet replacement

500.00 for compensation paid to incoming tenants

50.00 filing fee

(1,000.00) security deposit and pet deposit retained by landlord

\$1,891.50

Upon enquiry, the landlord estimated that approximately \$150.00 of the carpet invoice would pertain to sealing the floor with paint and the remainder of the invoice would apply to the removal of old carpet and installation of new carpet. The landlord's evidence included photographs of two significantly stained areas of carpeting and a letter from the carpet restoration company.

The tenant submitted that he did not receive a copy of the move-out inspection until after the landlord made this application. The tenant acknowledged having up to two cats at one time; however, one cat died months before the tenancy ended. The tenant was of the position that the damage was not as extensive as the landlord made it out to be and the tenant disagreed that all of the carpeting had to be replaced since the

damage was contained to two areas as the cat(s) were not permitted in one of the bedrooms or den. The tenant paid to have the carpets cleaned twice, the second time using the carpet restoration company recommended by the landlord. The tenant questioned the landlords attempt to mitigate the amount of damage or loss, pointing out the invoice does not provide a detailed description of what was installed, that the landlord did not consider less expensive flooring options and that there had been previous discussions about possibly dying the carpet.

Further discussion followed with respect to the normal useful life of carpeting. The landlord disagreed with my suggestion that carpeting has an average useful life of 10 years by insisting that in his experience carpeting lasts 20 years. The landlord did agree that diminished value of the damaged property would be appropriate but agreement could not be reached with respect to the remaining useful life of the carpeting had the carpeting not been damaged by cat urine. The landlord voluntarily hung up and exited the teleconference call before I had concluded the call.

Analysis

An award for damages is intended to compensatory and restorative, meaning the amount awarded would restore the party to a financial position similar to the position the party would have been in had the other party not caused the damage. If a landlord claims damage to property, the normal measure of damage is the cost of repairs, loss of rent during the repair, less depreciation. To provide an award without an allowance for depreciation of the property damaged would place the landlord in a better position than that before the damage occurred. For this reason I decline the landlord's request for an award for the replacement cost of the carpeting.

At issue in this case is the estimation of the depreciation of the damaged carpeting. The landlord stated that carpeting has an average useful life of 20 years in rental units he manages; however, I found that statement to be excessive when I consider that the

typical useful life of carpeting is 10 years in accordance with the useful life table in the Residential Tenancy Policy Guidelines. Although the table of useful life is a general guideline, the landlord did not supply sufficient evidence for me to conclude that the damaged carpeting that had been in the rental unit was of superior quality or was in such exceptionally good shape when the tenancy commenced that would justify a useful life two times the average useful life of carpet. Evidence that may have aided in substantiating the landlord's contentions may have included documentation showing the type of carpeting taken out of the rental unit and the manufacturer's warranty or expected wear guidelines. Of course, a move-in condition report would have aided in determining the condition of the carpet at the beginning of the tenancy. As the onus is upon the party making the claim to substantiate their claim, I cannot find the landlord has met the onus to show that the carpeting removed from the rental unit still had 12 years of useful life in it. Therefore, I calculate the depreciation based on 10 years as provided in the Residential Tenancy Policy Guidelines and find that the damaged carpet likely had 2 years of useful life remaining.

Even if I accepted the landlord's position that all of the carpeting was stained or had a lingering odour of cat urine, the cost to replace all of the carpet, less depreciation, equals \$436.80 [(\$2,341.50 less \$157.50 for sealing floor) x 2/10 years remaining useful life]. I am satisfied that the landlord compensated the incoming tenants \$500.00 and the landlord may recover that cost from the tenants. I also find the tenants are responsible for \$157.50 (\$150.00 plus GST) expenditure to seal the wood subfloor. These three amounts added together total \$1,094.30.

The tenants had authorized the landlord to retain their security deposit and pet deposit in the combined amount of \$1,000.00. The Act also provides that the tenants are entitled to interest on those deposits. I calculate the interest to be \$33.66 when the tenants authorized the retention of the security deposit and pet deposit meaning the tenants actually agreed to compensate the landlord \$1,033.66.

The Act does not permit a landlord to obtain a tenant's authorization to retain a security deposit or pet deposit for damages where the landlord has not complied with the requirement to conduct a move-in inspection report; however, I am satisfied that the landlord has made this application to retain the deposits within 15 days of the tenancy ending and the landlord is not in violation of the Act. From the tenant's testimony I also accept that the tenants agree with compensating the landlord for the damage to the carpets in an amount equivalent to the sum of their deposits and accrued interest.

As I calculated above, the tenants' offer of compensation is nearly the amount of damages I would award the landlord had the landlord satisfied me that all of the carpeting needed removal and replacement. However, I have considerable reservations that all of the carpeting needed replacement since I heard that the tenants' cat(s) were not permitted in some areas of the rental unit and the letter of the carpet restoration company does not describe damage throughout the rental unit. Therefore, based on the evidence before me, I find that the tenants' agreement to compensate the landlord \$1,033.66 by way of the landlord retaining the deposits and interest sufficiently compensates the landlord for the damage or loss incurred by the landlord.

In light of the above findings, the landlord is authorized to retain the tenants' security deposit, pet deposit and accrued interest for damages to the carpet. I make no award to the landlord for the filing fee.

Conclusion

The landlord was successful, in part, with this application. The landlord may retain the tenants' security deposit, pet deposit and accrued interest in satisfaction of the damage caused to the rental unit carpeting.

February 25, 2009

Date of Decision

Dispute Resolution Officer