



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for monetary orders for damage to the rental unit, for compensation under the Act and the tenancy agreement, an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

This tenancy began on May 1, 2008, with the parties entering into a written tenancy agreement on April 28, 2008. At the outset of the tenancy there were two Tenants on the Agreement, however, one of the Tenants left early and the second Tenant, the Respondent here, remained in the rental unit until March 31, 2010. The Tenant who left assigned the security deposit of \$775.00, paid on May 1, 2008, over to the remaining Tenant on January 11, 2010.

The Landlord is claiming for the costs to clean the rental unit and to replace a portion of the carpet in the rental unit due to the condition it was left in by the Tenant. The Landlord is claiming \$80.00 for cleaning the rental unit, \$60.00 for cleaning the drapes, and \$78.75 for cleaning the other portions of the carpet in the rental unit.

The Landlord is alleging the Tenant, or invited guests, caused six burn marks on the carpet. The Landlord alleges these burn marks are from cigarette burns. In evidence

the Landlord has supplied photographs, with a coin beside each burn mark, indicating there placement on the carpet.

There were also incoming and outgoing condition inspection reports performed by the Landlord and Tenant. The incoming report indicates there was no burn marks noted at the start of the tenancy.

An Agent for the Landlord for the Landlord testified the carpet was installed in the rental unit in April of 2003. The Agent testified that the carpet could not be repaired or patched, as these would not match the older carpet. The Landlord is claiming for \$897.75 for replacing this carpet.

The Tenant agrees to the \$80.00 cost for cleaning the rental unit, the \$60.00 for cleaning the drapes, and the e\$78.75 for cleaning the other portions of the carpet in the rental unit.

The Tenant disputes the cost of replacing the carpet. The Tenant testified she is not a smoker herself, although she did have guests over who may have caused the burn marks on the carpet. The Tenant stated she believed these were not all burns marks, but may have been from a candle. She also submitted that the carpet was quite worn out

Analysis

Based on the above, the testimony and evidence, and a balance of probabilities, I find that the Tenant has breached the Act and tenancy agreement by failing to clean the rental unit and by damaging the carpet.

Whether or not the burns marks were from a cigarette, the Tenant is still responsible for damage done to the rental unit beyond reasonable wear and tear. I do not find burn marks in the carpet to be reasonable wear and tear.

I allow the Landlord \$218.75, as agreed to by the Tenant, for cleaning at the rental unit.

As to the carpet replacement, I accept the evidence of the Landlord that the carpet was five years old at the outset of the tenancy. According to the policy guideline to the Act, the life expectancy of a rental unit carpet is 10 years. As the Tenant lived in the rental unit for two years, I find the carpet was seven years old at the end of the tenancy.

I find that were it not for the damages to the carpet done by the Tenant or her guests, the Landlord could reasonably expect to have had three more years of service from the carpet. Therefore, I find the Tenant should pay compensation to the Landlord of 30%, toward the replacement cost of the carpet.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established a total monetary claim of **\$525.25** comprised of \$218.75 for the cleaning costs, \$256.50 for 30% of the carpet replacement, and the \$50.00 fee paid for this application.

I order that the Landlords retain \$525.25 from the deposit and interest of **\$782.78** held in full satisfaction of the claim, and I order the Landlord to return the amount of \$257.53 to the Tenant. Pursuant to the policy guidelines, I grant the Tenant a monetary order for the balance due of **\$257.53**.

This order 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: August 16, 2010.

Dispute Resolution Officer