

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site, or property, to keep all or part of the security deposit, for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on April 29, 2010.

The Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issues(s) to be Decided

Is the Landlord entitled to a Monetary Order pursuant to sections 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

The undisputed testimony was the fixed term tenancy began on March 1, 2008 and switched to a month to month tenancy after February 28, 2009. Rent was payable on the first of each month in the amount of \$3,198.00 and the Tenant paid a security deposit of \$1,430.00 on March 1, 2008. The Tenancy ended January 31, 2010. It is unknown if a move-in inspection report was completed. Both parties confirmed a move-out inspection took place on February 1, 2010 and a move-out inspection report was partially completed and not signed.

The Landlord testified that the rental unit was a high-end condo built in the fall of 2007 and that this Tenant was the first person to occupy the brand new unit. Her sister, the other Agent for the Landlord, was the one who completed the move-out inspection with the Tenant on February 1, 2010. It was during the move-out inspection that it was determined that professional cleaning was required for the rental unit and the carpet as it was dirty and stained so they allowed the Tenant a few days to have this cleaning completed. There was further damaged caused to the carpet by the Tenant's cleaning which ultimately bleached the carpet in several spots. A quote was provided to the Tenant for replacing the carpet however no further action was taken by the Tenant so the Landlord filed for dispute resolution on April 28, 2010 to seek reimbursement for the replacement cost of the carpet. The carpet was replaced on June 21, 2010 at the cost of \$4,189.50, and because of processing the Estate of the Landlord, the rental unit was listed for sale near the middle to end of July 2010.

The Tenant testified and confirmed that the Landlord's testimony was correct and there were bleached spots in the carpet as a result of his cleaning attempts. He contacted the Landlord's Agent to have a quote prepared for replacement of the carpet however the quote came back higher than what he expected. He stated that he told the Agent that he wanted to seek other options. The Tenant confirmed he made no attempt to contact the Agent or the Landlord after seeing the quote to replace the carpet. He made no attempt to contact the Agent or Landlord after receiving the Notice of Dispute Resolution dated April 28, 2010, which states they were seeking the cost to replace the carpet. He referred to his evidence which included copies of e-mails dated September 1, 2010 for carpet coloring or replacement and a quote for carpet replacement dated September 1, 2010. He argued that his quotes for replacement were only \$3,400.00 while color matching was estimated between \$250.00 and \$300.00.

The Landlord Stated that the people who provided the e-mails and quote for the Tenant had never been in the rental unit and have never seen the damaged carpet. She also confirmed that the carpet services company inspected the carpet prior to the Agent obtaining a quote for replacement.

The Tenant confirmed that none of his suppliers saw the carpet. He stated that the company who replaced the carpet was represented by a close friend of the Agent and he did not give consideration to repairing the carpet and only considered replacement. He referred to his e-mails which includes the statement "a couple carpet stains would also be considered normal wear and tear in a rental apartment."

In closing the Landlord stated that there were not simply a couple of stains, there were several stains and several areas that were bleached out.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item.

The evidence supports the carpet was stained and bleached in more than one location which caused the Landlord to suffer a loss of \$4,189.50 when it was replaced. The Tenant made no attempt to contact the Landlord or Agent after vacating the rental unit or after receiving the Notice of Dispute Resolution in April 2010. The Tenant waited seven months before obtaining quotes to color the carpet and therefore did not mitigate his potential loss. Section 32 (3) of the Act provides that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. Based on the aforementioned I hereby approve the Landlord's claim in the depreciated amount of \$3,142.13 which is based on a three year old carpet that has a life span at the low end of 12 years. ($\$4,189.50 \times 9/12$)

The Landlord has been successful with their claim therefore I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Carpet replacement – depreciated amount	\$3,142.13
Filing fee	50.00
Subtotal (Monetary Order in favor of the landlord)	\$3,192.13
Less Security Deposit of \$1,430.00 plus interest of \$17.93	- 1,447.93
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$1,744.20

Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for **\$1,744.20**. The order must be served on the respondent and is enforceable through the Provincial Court 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: September 13, 2010.

Dispute Resolution Officer