



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes – MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the female tenant.

The tenant had submitted documentary evidence to the Residential Tenancy Branch but not to the landlord. Part of the evidence submitted was on a digital storage device but I have no mechanism to open the device. For both of these reasons the tenant's documentary evidence has not been considered in this decision.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit, to retain all or part of the security deposit, and to recover the filing fee paid by the landlord for this Application, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenancy began on June 1, 2009 as a 1 year fixed term tenancy with a monthly rent of \$850.00 due on the 1st of the month with a security deposit of \$425.00 paid on April 19, 2009.

The landlord confirmed that no move in condition inspection was completed but submitted a letter signed by the tenant dated February 2, 2010 stating that when the tenant moved into the rental unit it was in "perfect condition except for the carpet by the main door (2 small snags) and the hole in the bedroom wall from the door stopper."

The tenant testified that she only signed the February 2, 2010 because she felt she had no choice, but did not elaborate on why she felt that way or what the consequences may have been had she not signed the letter. The tenant did acknowledge the rental unit was in good condition when she moved in.

The landlord testified that the tenants did not participate in a move out inspection but rather just watched from the door way when she completed a walkthrough. Later, when the landlord tried to contact the tenants to cover the inspection report the tenants did not respond. The landlord left two messages with the tenants but they did not respond. Then when the landlord received the tenant's forwarding address she tried again and spoke to the male tenant who indicated they would not be meeting with the landlord.

The landlord testified that the rental unit was left in a very unclean manner and specifically the carpet had many stains and the entire rental unit had a permeating odour after the tenants vacated the unit. The landlord testified that she knew the 5 year old carpets could not be cleaned so she replaced the flooring.

The tenant testified that the carpet was in bad shape because it had been installed properly and it was fraying. She also stated the landlord indicated she was going to replace the carpeting anyway and the tenant feels she should not be responsible for the landlord's plans or for the damage that pre-existed the tenancy (fraying carpet).

The landlord indicated that there were approximately 178 holes in the walls of one bedroom alone and that there were substantial numbers in the other rooms as well. As a result the landlord states she had to have all the walls painted. The tenant does not dispute the large number of holes but points out the walls had not been painted prior to her tenancy.

Despite the landlord's indication that the rental unit required substantial cleaning she had not made any claims for any costs associated with that cleaning. The landlord testified that she and her husband did all the work but provided estimates based on quotes received from professional painters and flooring installers. The landlord has provided receipts for all materials. The landlords total claim is as follows:

Description	Amount
Materials – flooring and paint	\$711.02
Labour – painting 8 hours @ \$40.00/hour	\$320.00
Labour – removal of carpet/installation of laminate flooring	\$1,500.00
Total	\$2,531.02

Analysis

Section 37 of the *Act* states a tenant who is vacating a rental unit must leave the unit reasonably clean and undamaged except for reasonable wear and tear. Based on the testimony and the photographic evidence submitted (16 photos from landlord) I accept that the flooring required replacement and the repairs required to the walls included painting.

I also accept that the condition of the carpet and the walls at the end of the tenancy occurred during the tenancy and as such the tenants failed to comply with Section 37 of the *Act*.

The landlord has submitted estimates for carpeting to replace the flooring ranging from \$1,166.79 to \$1,660.99, and that her costs for the laminate flooring were approximately \$432.69 and her estimate for installation was \$1,500.00 for a total of \$1,932.69.

I acknowledge the landlord testified that she installed the flooring herself and the installation charges are estimated from professional installers' rates. From this estimate I have to assume the installation of laminate flooring is an upgrade from installing carpet.

Despite my finding that the tenants are responsible for the damage to the carpet and therefore replacement it is not reasonable to expect the tenants to compensate the landlord for an upgrade of materials. In addition, Section 7 of the *Act* requires a party who is making a claim for damage or loss under the *Act* must do whatever is reasonable to minimize the damage or loss.

I also accept the landlord's testimony that the previous flooring was at least 5 years old. As per the useful life tables in Residential Tenancy Policy Guideline 37 the useful life for carpet is 10 years, as such the value of the replacement must be depreciated by the remaining useful life or by half the value.

Using the lowest estimate for flooring replacements of \$1,166.79 I grant the landlord \$583.40 in compensation for replacement of flooring.

I accept the supplies required for painting the rental unit amount to approximately \$278.33. However, as the landlord estimated the labour costs using professional rates and then completed the painting herself, I find it unreasonable to hold the tenants to account for a professional rate. I find a rate of \$20.00 per hour or a total of \$160.00 to be sufficient compensation.

Conclusion

For the reasons noted above, I find the landlord is entitled to compensation in accordance with Section 67 of the Act in the amount of \$1,071.73 comprised of compensation of \$583.40 for flooring; \$438.33 for painting; and to recover the filing fee of \$50.00 for this application.

I order that the landlord may retain the deposit and interest held of \$425.00 in partial satisfaction of the claim and grant a monetary order for the balance due of \$646.73. This order must be served on the tenant and 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: November 25, 2010.

Dispute Resolution Officer