



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNSD, & FF

Introduction

This hearing dealt with the landlord's application seeking monetary relief due to damage caused to the rental unit by the tenant. The landlord also seeks to retain the tenant's security deposit against the alleged damages.

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

Did the tenant breach the tenancy agreement, Act, and regulations by damaging the rental unit entitling the landlord to monetary relief?

Background and Evidence

This tenancy began on March 1, 2009 for the monthly rent of \$2,100.00 and a security deposit of \$1,050.00 paid on February 1, 2009. The tenancy ended on June 30, 2010. The landlord and tenant did not complete a written move in condition inspection report at the start of the tenancy.

The landlord is seeking monetary relief in the amount of \$2,342.00 for the following repairs completed to the rental unit at the end of the tenancy:

- A proportional cost to replace the carpets for \$2,122.00;
- Cost to clean the carpets prior to decision to replace carpets for the amount of \$125.00;
- The sum of \$60.00 for the landlord's time to research and arrange replacement of carpets; and
- Cost to complete touch up painting for the amount of \$35.00.

The landlord submits that the condition of the carpets at the start of the tenancy was fair, but there was one pervious stain in the living/dining room area. At the end of the tenancy there were two new stains. The tenant does not dispute that he caused two new stains on the carpet.

The landlord submits that it was not possible to complete a repair of the area where the stains occurred because they could not find a reasonable match to the existing carpet and it is in a high traffic area where the joint of the repair would be very visible. As a result, the landlord submits that they were required to replace all the carpe which runs through most of the rental unit including the living/dining room, bedroom and main hallway. The landlord submits that the tenant is responsible for a portion of the total cost of replacement because the stains affect the overall effect and appeal of the rental unit and if the repair was completed to a partial area of the carpets the appeal of the rental unit would decline.

The landlord actually replaced the living/dining room area with new carpet, the hallway with laminate and left the original carpet in the bedroom. The landlord acknowledged that the rental unit now has three different floor types.

The landlord acknowledged that the existing carpet is 5 years old and submits that the tenant should be responsible for a third of the total cost based on the carpets having a useful life of 15 years.

Respecting carpet cleaning, the landlord states that the tenant did not inform the landlord of his attempts to clean the carpet and the tenant cancelled the professional appointment which was arranged. The landlord submits that the carpet cleaning was completed before it became apparent that the carpets had to be replaced.

The landlord submits that the paint used by the tenant to do some repairs was not a correct tint or texture. As a result, the landlord submits that he had to redo the repairs.

The tenant acknowledges that the two new stains were caused during the tenancy. The tenant submits that he attempted to clean the spill and as a result caused the carpet to bleach out a bit. The tenant argued that he is only responsible for the stains and should not be charged for replacement of the carpet in the entire rental unit.

The tenant also questioned the cost for carpet cleaning when the landlord replaced all the carpet except for the carpet in the bedroom. The tenant also submitted that some carpet cleaning had been completed to the dining/living room already.

With respect to the paint the tenant argued that he completed the necessary work based on the paint colour provided by the landlord at the start of the tenancy and he should not be charged anything further.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures of a rental unit a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The landlord is seeking that the tenant be responsible for the replacement of the carpets in the rental unit on the basis that the landlord could not repair or replace the damaged area without devaluing the rental unit. It was the landlord's position that the carpet could not be replaced only in one location because it would negatively impact the marketability of the rental unit.

I do not accept this argument and I find that the tenant Act only requires the tenant to be responsible for the portion of the carpets which he damaged. The landlord could have repaired the carpets or replaced only the damaged portion of the carpets but choose to replace the flooring in the rental unit.

I accept that the parties initially discussed repairing the stains and I accept the evidence submitted by the landlord that the estimated cost to repair was \$650.00 plus \$160.00 for carpet. Based on this information I find that the estimated cost of \$810.00 is a reasonable reflection of the damage caused to the carpet by the tenant.

With respect to the carpet cleaning I find that the tenant should only be responsible for a portion of the \$125.00 claimed to reflect the cleaning of the bedroom. I find that the tenant is responsible for a portion of the actual cost of the carpet cleaning for the amount of \$95.00. While the tenant did some carpet cleaning, it was not complete and I find it is reasonable for the landlord to attempt to clean the carpets prior to deciding to replace them. I find that the tenant is responsible for the \$95.00 to clean the carpets.

With respect to the paint, I accept that the tenant attempted to do the touch ups to the best of his ability. Unfortunately, the paint used was the wrong texture so the landlord had to do the touch up painting again. I accept the landlord's claim for the sum of \$35.00.

I find that the landlord has established a total monetary claim for the sum of \$990.00 including the reimbursement of the \$50.00 filing fee paid for this application. I Order that the landlord may recover this sum from the tenant's security deposit of \$1,050.00.

This leaves an outstanding balance of \$60.00 which must be paid to the tenant. The landlord is required to return the remaining portion of the tenant's security deposit in accordance with section 38(1) of the *Act*.

Conclusion

The landlord's application is granted. I have determined that the landlord established a total monetary claim for the sum of \$990.00. I have ordered that the landlord may recover this sum by deducting it from the tenant's security deposit. The remaining portion of the tenant's security deposit should be returned to the tenant.

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: December 20, 2010.

Dispute Resolution Officer