



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND & FF

Introduction

This hearing dealt with an application by the landlord seeking \$5,000.00 in damages which she alleges were caused to the rental unit by the tenants.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue (s) to be Decided

Did the tenants breach the tenancy agreement, Act or regulations entitling the landlord to monetary relief?

Background and Evidence

This is the third dispute resolution hearing between the parties since the tenancy ended. The first hearing dealt with the tenants' application for the return of their security deposit. The second application dealt with the landlord's claim for damage caused to the rental unit. That hearing was heard on July 15, 2010 and through that hearing a Dispute Resolution Officer (DRO) determined that the carpets were damaged by the tenants and the DRO awarded the landlord the sum of \$400.00. The landlord was seeking over \$5,000.00 towards replacing the carpets in the rental unit.

The landlord filed this application on July 21, 2010, 6 days after her original application was heard and a decision was issued. In the first application the landlord sought the following damages which she alleged were caused to the rental unit by the tenants:

- Replacement of the carpets;
- Replacement of three blinds;
- Cost to repaint the walls in the rental unit;
- Cost to repaint the baseboards in the rental unit; and
- Cost to repair screen door to rental unit.

In this application the landlord seeks the following in damages:

- \$7,000.00 in lost rental revenue because she was unable to rent the unit due to the damaged condition of the rental unit;
- Carpet cleaning cost of \$313.60;
- Additional cost for stain removal on carpets for \$126.00;
- Cost for the landlord to clean the rental unit for \$350.00;
- Cost to advertize the rental unit for \$595.76; and
- Cost related to the time the landlord has spent on these issues and mental stress for \$2,000.00.

The landlord states that she would accept the sum of \$5,000.00 as reimbursement for these costs.

Despite the fact that the issue of the carpets has already been determined in the previous hearing, the landlord continuously attempted to make arguments as to why the tenants should be held accountable to the replacement cost of the carpets.

The landlord did not provide any argument to explain why these additional claims for damages were not brought forward when she filed the first application for Dispute Resolution.

The tenants dispute the landlord's claim. The tenants submit that the landlord brought forward a claim for damages under the previous application, which was dealt with, and that there should be no further basis for the landlord to make additional claims.

In support of this application the landlord provided copies of the receipts related to carpet cleaning and for advertizing the rental unit. The landlord also provided a typed statement indicating that she personally cleaned the house at the end of the tenancy for 14 hours for the cost of \$350.00.

Analysis

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

The purpose of the dispute resolution process is to assist landlords and tenants, in a formal dispute resolution, to have an impartial, independent Dispute Resolution Officer hear the landlord and the tenant explain their separate versions of a dispute, receive the evidence presented by each party and make an impartial and binding decision to resolve the dispute. The objective is to ensure the process is consistent, efficient and just for both parties.

This tenancy ended on July 31, 2009 and the landlord failed to file an application for damages against the tenants until March 2010. At that hearing the landlord brought forward an extensive and detailed claim for damage against the tenants which included damage to the carpets, damage to blinds, damage to baseboards and damage to a screen door.

I find that the landlord is precluded from making any addition claims against the tenants related to damage to the carpets as this was previously determined in a final and binding decision. As a result, I have refused to consider the landlord's claim for carpet cleaning costs.

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. In this case the landlord bears the burden of proof.

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.

The landlord has submitted that she lost rental revenue for the sum of \$7,000.00 because of the damaged carpet. The landlord maintained again in this proceeding that the carpets were damaged beyond repair by the tenants and as a result they should be responsible for the total cost of replacing the carpets. The landlord submitted that the prospective tenant arranged to occupy the rental unit on August 1, 2009 refused to

complete the tenancy agreement because of the condition of the carpets. Subsequently, the landlord submits that she could not rent the unit to any other prospective tenants because of the condition of the carpets resulting in the advertizing costs claims and the damages related to mental stress.

I do not accept the landlord's claim because I find that the landlord has failed to accept the responsibility that the replacement of the carpets is her responsibility as the owner of the property. As was discussed in the previous dispute resolution hearing, the carpets in the rental unit are 11 years old and have no useful value. It is the expectation that the landlord replace the carpets approximately every 10 years. Although it was recognized that the tenants caused some damage to the carpet, which the landlord has received reimbursement, I reject the landlord's position that her loss of rent, advertizing costs and mental stress are a result of the tenants. Rather, I find that the landlord has brought these losses upon herself by failing to replace the carpets in the rental unit in a timely manner and has also failed to mitigate her losses.

I deny the landlord's claim for loss of rent in the amount of \$7,000.00, the landlord's claim for advertizing costs in the amount of \$595.76 and the \$2,000.00 for time spent and mental stress.

I also deny the landlord's claim for the cost to clean the rental unit. I find that I can place no weight on the evidence submitted by the landlord that she completed 14 hours of cleaning. I find it unlikely that the landlord forgot to claim this amount during her first application for Dispute Resolution, especially when the landlord identified scratches to baseboards, damaged walls and damaged blinds. The landlord provided no compelling reason why the claim for cleaning the rental unit was not brought forward until this application. As a result, I find that the landlord has not established that the rental unit required 14 hours of clean and has not demonstrated any verification of the loss.

Conclusion

The landlord's application for Dispute Resolution claiming damages against the tenants is dismissed.

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 22, 2010.

Dispute Resolution Officer