



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for damage to the unit; to keep all or part of pet damage or security deposit; for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They submitted evidence to the Residential Tenancy Branch which they also forwarded to each other and submitted at the proceedings.

Issue(s) to be Decided

Is the landlord entitled to retain the security deposit?

Is the landlord entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of a two level single family home. Pursuant to a written agreement, the month to month tenancy started on April 1st, 2010 and ended September 30th, 2010 with the tenant providing the landlord with proper written notice to end tenancy. The monthly rent of \$1400.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$700.00.

Tenant M.M lived in the lower portion while his mother, tenant H.H, lived in the upper portion of the home. Tenant H.H, did not participate in the hearing.

The landlord testified that he never gave the tenants written permission to paint the interior of the house. He referred to the tenancy agreement that specified that changes must first have written approval from the property manager, and that this approval was never given to the tenants. The landlord further submitted that he did not agree with the tenants' choice of colours, and that as a result he was forced to repaint with more suitable colour tones.

The landlord stated that the carpets reeked with pet odour. He said that attempts to subdue the smell with deodorant and professional cleaning failed, and that he ultimately had to resort to replacing the carpets.

Lastly, the landlord stated that he sought to recover dumping fees for personal belongings that the tenants left behind after the tenancy.

The landlord submitted an updated monetary claim which can be summarized as follows:

- Oct. 2, 2010 painting:	\$ 200.00
- Oct. 3, 2010 painting	\$ 200.00
- Oct. 4, 2010 painting:	\$ 80.00
- Landlord cleaning:	\$ 80.00
- Paint supplies:	\$ 208.31
- Carpet deodorant:	\$ 9.84
- Dumping fee:	\$ 50.00
- Professional carpet cleaning:	\$ 180.00
- Remove & replace carpet in red room:	\$ 248.60
- Remove & replace carpet in main area:	\$ 982.90
- Underlay:	\$ 107.18

- Labour for replacing carpet:	\$ 400.00
- Filing fee:	\$ 50.00
- Sub-Total:	\$2796.83
- Minus security deposit:	\$ 700.00
- Total:	\$2096.83

Property manager M.C. testified that the condition inspection report on move out was completed when two of the tenants' dogs were still in the house and for this reason she did not mention the pet odour in the report. She confirmed however that the odour prevailed even after the dogs left. The landlord produced photographs showing carpet stains, but stated that the reason for replacing the carpets was precipitated by the prevailing odour.

Tenant M.M. did not dispute the condition inspection reports, but argued that the issues raised by the landlord are not mentioned in the report. He stated that the previous tenants also had pets and that the carpets were already stained. He stated however that he did not notice a pet odour at the start of the tenancy. M.M. stated that throughout the tenancy he had a dog and two cats, and his mother also had two dogs. He also stated that he babysat a friend's dog for a short time, but doubts that the carpets would have been ruined given that he only had dogs for four months, and that they were house trained.

Tenant M.M. testified that property manager L.V. gave them written permission to paint the house, and that L.V. stated that she trusted them with their choice of colours. M.M. produced an email dated October 8th, 2010 from former property manager B.G. stating that the landlord had verbally agreed to paint the house, but they were only willing to cover \$50.00 for materials. The landlord argued that he told the property manager that he did not agree; however M.M. countered that they never received this message. Ultimately, the parties never contacted each other directly over this issue, and the tenants painted the house based on the property manager's verbal consent.

M.M. stated that he did not have time to dispose of a mower and punching bag at the end of the tenancy.

Analysis

The party applying for compensation bears the burden of proof and must provide sufficient evidence to establish in part that the other party violated the Act, regulation, or tenancy agreement, and that the violation resulted in damage or loss to the applicant.

Concerning the claim for painting, the landlord claimed \$688.31 in total. There is no question that the tenants were contractually obligated to obtain written permission prior to making any changes to the rental unit. The landlord acknowledged that although his property manager verbally agreed that the tenants could paint the rental unit, he did not give written approval. M.M. provided evidence that the property manager gave verbal permission. The landlord is bound by the representations of his agent. I find that when the property manager communicated to the tenants that they could paint the unit, she waived the landlord's right to rely on the provision of the tenancy agreement in which the tenants were required to obtain written permission. Accordingly I find that the tenants were relieved of the obligation to obtain written permission and the landlord's claim is dismissed on the basis of his agent's actions.

The landlord claimed \$1928.52 in total for carpet cleaning and replacement. M.M. pointed out to the condition inspection report and argued that the carpets were already stained. The landlord does not dispute this argument; he disputes that the smell was the cause for the claim. The *Residential Policy Guidelines* provide an estimated useful life for various items in rental accommodations for reasonable wear and tear. In the case of carpets that useful life is ten years. The landlord stated that the carpets were new in 2006. The landlord and his agent presented considerable evidence to support that the carpets sustained damage beyond reasonable wear and tear. I find on the balance of probabilities that the carpets lost a certain amount of useful life from the tenants' pets.

Although the guidelines do not necessarily reflect that a carpet cannot be used beyond ten years, it is reasonable that the carpets subject to this dispute could have remained until 2016. Accordingly, I award the landlord a loss of useful life of 60% for the sum of \$1157.00.

The landlord claimed \$50.00 in dumping fees. The tenant confirmed leaving some belongings behind and I award the landlord that sum.

The landlord claimed \$80.00 for additional cleaning. The landlord did not specify what this cleaning entailed during the hearing. In the absence of receipts or substantive evidence, I dismiss that claim.

The landlord has established a claim of \$1207.00. Since he was partially successful, I also award him partial recovery of the filing fee for \$25.00 for a claim totalling \$1232.00.

Conclusion

Pursuant to Section 67 of the Act, I authorize the landlord to retain the tenants' \$700.00 security deposit and grant the landlord a monetary order for the balance of \$507.00. This Order may be registered in the Small Claims 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: February 17, 2011.

Residential Tenancy Branch