



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to the rental unit, for compensation under the Act and the tenancy agreement, to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

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

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

The Landlord and Tenants entered into a written tenancy agreement on June 23, 2010. The term of the tenancy agreement was for one year, from September 1, 2010 to August 31, 2011. The monthly rent was set at \$2,500.00 per month and a security deposit of \$1,250.00 was paid on or about September 1, 2010.

The Tenants who signed the tenancy agreement are the parents of adult children who actually occupied the rental unit. Nonetheless, the Tenants are the responsible party under the tenancy agreement. In this decision I refer to the adult children of the Tenants as the "Occupants".

The Landlord performed an incoming condition inspection report.

The Agent for the Landlord testified that when the Occupants were moving into the rental unit they complained about the smell of a carpet in the basement. The Landlord replaced all the carpet in the basement in the first month of the tenancy, in September of 2010.

At the end of the tenancy, when the Agent for the Landlord and the Occupants and Tenants were vacating the rental unit, the Landlord performed an outgoing condition inspection report.

During the course of the outgoing condition inspection report the Agent for the Landlord discussed cleaning the carpets with the Occupants and Tenants who were present. They informed the Agent that the carpets had been professionally cleaned. The Agent requested a copy of the receipt for payment of the professional cleaning, however, none was ever provided.

During the course of this outgoing report, the Tenant who was conducting the walkthrough with the Agent agreed that the Tenants would pay the water bill and for two walls to be repaired and painted. The repair of the walls was \$80.00 and the water bill was \$116.85.

The parties indicated on the outgoing condition inspection report that the items in dispute between them were the cost to have the carpets cleaned and the cost to repair damage to, and burn marks on, the new carpets. The Agents testified that they had thought the carpets might be repaired at this time.

The Landlord alleges that one of the Occupants used duct tape to hold wires to the floor and when the duct tape was removed it pulled a thread up creating a run in the carpet. The Landlord submits that there were a number of burn marks on the carpet.

The Landlord had a professional cleaner come in to do the subject carpets and claims \$89.60 for this.

The Agent testified that during the course of cleaning the carpet it was discovered that a square of carpet, approximately 1 foot by 1 foot, had been cut out of the carpet. Neither the Occupants nor the Tenants had informed the Landlord about this square cut out of the carpet prior to vacating. The Landlord alleges that the Tenants or Occupants tried to repair the carpet, but when they were unsuccessful, they hid the cut.

The Landlord entered into evidence a copy of a quote from the company who installed the carpets in September of 2010 and then replaced the carpets in September of 2011:

“Existing carpet has mutable burns and a 1 square foot hole in the middle of the living room an attempt to repair other damage The amount of damage is not repairable and should be replaced”

[Reproduced as written.]

The Landlord replaced the carpet at a cost of \$2,094.40 and claims this amount against the Tenants. The Landlord submitted evidence that the earlier cost of the carpet, in September of 2010 was \$1,619.00. The Agent testified that the Landlord tried to negotiate a reduction in the cost of the replacement carpet, but were informed that the price of carpet had gone up and could not be reduced.

In reply, the Tenants claim that it was not necessary to re-carpet the entire basement. They say the area of carpet where the run is barely noticeable. One of the Tenants testified that all she saw in the photograph and in the carpet when she looked at it were a few loose threads; she could not see a seam.

The Tenants also complained that they were not informed that the carpet had to be replaced. They argue the Landlord should have contacted them before replacing the carpet.

The Tenants further argue that the Landlord did not get a number of quotes.

The Tenants also argued that there is a conflict of interest because the carpet company that supplied the carpet had an interest in having the entire carpet replaced.

Analysis

Based on the testimony, evidence, photographs and a balance of probabilities, I find that the Tenants have breached section 37 of the Act by leaving the rental unit with unrepaired damages, which were beyond reasonable wear and tear.

I find the Tenants did not clean the carpets, pay the water bills or repair the walls and these breaches have caused a loss to the Landlord.

I also find the carpets were damaged beyond reasonable wear and tear, and furthermore, the carpet was damaged beyond repair, based on the third party evidence before me of the professional carpet cleaner.

I find that the Tenants are responsible to pay the Landlord for the replacement of the carpet, less the depreciated value of the carpet. Under Policy Guideline 37 to the Act the useful life of carpeting is 10 years. Therefore, I allow the Landlord the cost of the replacement carpet less one year depreciation in the amount of \$1,884.96 ($\$2,094.40 - \$209.44 = \$1,884.96$).

I do not find the Landlord was required to inform the Tenants that the entire carpet needed to be replaced before doing so. In the normal course of an outgoing condition inspection report, the parties go through the rental unit and either agree or disagree as to what needs to be done. Based on this that either of the parties may get estimates to make repairs, or may get two or three quotes on the repairs.

In this case, it was agreed by the parties during the outgoing report that there were burn marks on the carpet. They were going to see what the cost of these repairs would be, if possible.

However, there was a square cut into the rug, and an attempt was made to conceal or hide the damage. Therefore, at the time of the outgoing report, the Agent for the Landlord was unaware of this damage, as it had been concealed.

Once the rental unit had been vacated and the tenancy has ended, which is what occurred here, there is no ability for the Tenants to enter the rental unit again to make repairs or to have replaced the carpets. It is up to the Landlord to make repairs and then claim against the Tenants and prove their losses. Therefore, I find in this instance that there was no requirement under the Act that the Landlord had to inform the Tenants the carpet was going to be replaced and not repaired.

I also note that in regard to mitigating the loss attributable to the Tenants, section 7 of the Act placed a duty on the Landlord to do whatever is reasonable to minimize the loss.

Based on the evidence before me, I find that the Landlord acted reasonably to minimize the loss to the Tenants. The Landlord had a short period of time to prepare the rental unit for their next renters, and a 15 day time limit under the Act to claim against the security deposit. To delay repairs might have made the Tenants liable for lost rent caused by their damages, further increasing the claim against the Tenants.

The Tenants have also provided no substantive evidence to prove that the Landlord did not act reasonably in replacing the carpets or that these carpets could have been repaired. I also find that the Tenants have provided no quotes indicating the cost of the

replacement carpet was unreasonable. Lastly, I do not accept the speculation of the Tenants that the carpet company had a conflict of interest here.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches by the Tenants have caused the Landlord to suffer a loss in the amount of **\$2,221.41**, comprised of the cost of replacing and cleaning the carpets, the water bill and other repairs described above, plus the \$50.00 fee paid for this application.

I order that the Landlord may retain the security deposit of **\$1,250.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$971.41**.

If the Tenants fail to pay this amount, this order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, except as otherwise provided for under the Act and 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 30, 2011.

Residential Tenancy Branch