



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with cross applications. The tenant applied for return of double his security deposit and pet deposit. The landlords applied for compensation for damage to the rental unit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the tenant entitled to return of double the security deposit and pet deposit?
2. Have the landlords established an entitlement to compensation from the tenant for carpet replacement?

Background and Evidence

The following information was undisputed by the parties. The tenancy commenced July 8, 2011 and ended August 31, 2011. The tenant had paid a \$475.00 security deposit and a \$100.00 pet damage deposit. The tenant kept two birds in the rental unit. A move-in inspection report was signed by both parties and a copy was provided to the tenant. The tenancy became very strained very early on in the tenancy. By way of a letter dated July 23, 2011 the tenant gave written notice to end tenancy effective August 31, 2011. An altercation between the tenant's son and the male landlord took place on August 13, 2011.

During the day on August 31, 2011 the keys were delivered to the landlord by a person acting on behalf of the tenant (herein referred to by initials CH). CH gave the landlords a note from the tenant instructing the landlords to mail his security deposit and pet deposit to him at the rental unit address and Canada Post would forward the mail with his change of address service. The tenant also indicated in the note that he did not authorize any deductions from the deposits and recommended the landlords conduct the move-out inspection with CH. Upon receiving the note from CH the landlord wrote on it that the tenant should refer to their letter of August 31, 2011.

Also in the tenant's evidence package was another letter addressed to the landlords and dated August 31, 2011. The letter appears to be signed by CH and provides a different forwarding address for the tenant along with instructions that the landlords not to attend the said property.

During the hearing, the landlords acknowledged that they received a forwarding address for the tenant on August 31, 2011. The landlords testified that they told CH that the tenant should contact them with respect to a convenient time to conduct a move-out inspection. The landlords did not hear from the tenant and proceeded to conduct a move-out inspection without the tenant present at 8:00 p.m. on August 31, 2011.

In the landlord's letter of August 31, 2011 they inform the tenant that an inspection would take place that evening and the landlords would prepare a statement with respect to return of the "damage deposit". They further inform the tenant that an explanation of deductions (if necessary) will be prepared and they will mail it and the move-out inspection report to the tenant via registered mail by September 7, 2011. The landlords instruct the tenant to sign the report and return it to them and if there are no objections they will send a cheque September 15, 2011 by registered mail. The landlords indicate that the tenant should have a change of address in effect with Canada Post and request that he not return to the property or access their mailbox.

The landlords proceeded to inspect the unit without the tenant present at approximately 8:00 p.m. on August 31, 2011. On September 11, 2011 the landlords sent an email to the tenant to inform him that they had talked with staff at the Residential Tenancy Office and that the tenant would have to physically participate in an inspection. The tenant responded September 13, 2011 via email and indicated he would not participate in an inspection, the landlords did not send the inspection report on time, and to send the deposits back to him or he would take legal action. The landlords respond on September 14, 2011 including the statement that the inspection report did not have to be sent to the tenant by any specific date. In the emails from the landlord they mention bird droppings staining the carpets and cigarette burns in the carpet.

The landlords sent the move-out inspection report to the tenant with a copy of their Application for Dispute Resolution on October 22, 2011. The landlords explained that they did not file their Application for Dispute Resolution sooner as they were unfamiliar with the Act and because of fear of the tenant or the tenant's son.

With respect to the landlords' claim for carpet damage the landlord submitted that all of the carpets need replacement because there are burn marks in every carpeted room and because there are stains from the birds in every carpeted room. The landlords acknowledged that there was no odour associated with the bird stains. The landlords stated they have not yet replaced the carpets as they do not have the money for replacement and that other people are now occupying the suite.

The landlords submitted that the carpets were newly installed in May 2008. The landlord submitted that he spoke with the professional carpet cleaner hired by the tenant and was satisfied the carpets were as clean as they were going to get by professional cleaning. The landlord consulted a carpet store and learned that the carpet could not be patched as the dye lot would be different. The carpet store provided an estimate for carpet removal and installation of new carpet and underlay. The estimate is for \$2,612.40 which is the amount the landlords are claiming with this Application for Dispute Resolution.

The tenant denied there were any stains in the carpet after they were cleaned. The tenant denied there were burn marks in the carpet. Rather, the tenant submitted that one spot in the hallway was actually something metallic that was there since the beginning of the tenancy. The tenant pointed to a metallic object under the vinyl flooring in the kitchen as well. The tenant submitted a video of the rental unit that he filmed August 25, 2011 as evidence of the rental unit at the end of the tenancy. The landlords disagreed that there is anything metallic in or under the carpet.

Provided as evidence for this proceeding were copies of: video footage taken by the tenant August 25, 2011; photographs taken by the landlords August 31, 2011; the condition inspection reports; and various written communications between the landlords and tenant.

Analysis

Upon consideration of all of the evidence before me, I make the following findings and provide the following reasons for those findings.

Tenant's application

The first issue for me to determine is whether either one of the parties extinguished their right to claim the security deposit and pet deposit.

Section 35 of the Act provides for certain requirements at the end of tenancy including the requirement that the landlord offer the tenant two opportunities to participate in a

move-out inspection, as prescribed by the Regulations. The Regulations provide that the landlord is required to make the first proposal for one or more dates and times for the inspection. In response to the landlord's offer, the tenant may appoint an agent to act on their behalf during the move-out inspection or propose an alternative date and time to the landlord. If a tenant responds by proposing an alternative date or time the landlord can accept or reject the tenant's proposal but if the landlord is not available at tenant's proposed date and time the landlord must serve the tenant with a *Notice of Final Opportunity to Schedule a Condition Inspection*.

Section 36 of the Act provides that where a landlord has failed to meet their obligation with respect to move-out inspection requirements, the landlord's right to claim against the security deposit or pet deposit for damage to the rental unit is extinguished.

Based upon the evidence before me, I find the landlords did not propose dates and times to the tenant for purposes of participating in a move-out inspection as required by the Act and Regulations. Accordingly, I find that it was the landlords that extinguished their right to claim against the deposits.

The second issue for me to determine is whether the tenant is entitled to return of double the security deposit and pet deposit.

Section 38(1) of the Act requires the landlord to either return the security deposit or pet deposit to the tenant or make an Application for Dispute Resolution claiming against the security deposit or pet deposit within 15 days from the later of the day the tenancy ends or the date the landlord receives the tenant's forwarding address in writing. Where a landlord violates section 38(1) of the Act, the security deposit must be doubled pursuant to section 38(6) of the Act.

I am satisfied the tenant provided the landlords with a forwarding address in writing on August 31, 2011 and the tenancy ended August 31, 2011; therefore, the landlord had until September 15, 2011 to either refund the deposits or make an Application for Dispute Resolution to avoid the application of section 38(6) of the Act. I find the landlords failed to meet the landlord's obligations under section 38(1) of the Act and must now pay the tenant double the security deposit and pet deposit.

The tenant is awarded \$1,150.00 (\$575.00 x 2) plus the \$50.00 filing fee he paid for his application for a total award of \$1,200.00.

Landlords' application

Section 21 of the Residential Tenancy Regulation provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

I am satisfied the move-in inspection report was prepared in accordance with the Act and based on that report I find there is sufficient evidence the carpets were in "good" condition at the beginning of the tenancy without any exceptions noted.

I find the landlords did not prepare a move-out inspection report in accordance with the Act as the tenant was not provided two opportunities to participate in the move-out inspection with the landlords. Accordingly, I give the move-out inspection very little evidentiary weight. I considered the best evidence of the condition of the rental unit at the end of the tenancy to be the photographs and the video taken by the parties.

Upon review of the photographs and the video I find I am not satisfied that the carpets are so badly damaged that they require replacement. I am not satisfied the mark in the hallway carpet is a burn as alleged by the landlords as the landlords did not provide a close-up photograph of that mark and because there are imperfections in the nearby linoleum flooring that appear to be caused by an underlying metal object. I also find that the stains in the living room carpet are small or barely visible in the landlord's photographs. Thus, the stains or marks shown in the landlords' photographs do not satisfy me that the carpets are no longer in a reasonable condition suitable for occupancy.

While I accept there may be diminished value to the carpets from the stains or marks the landlords have not provided a reasonable estimate of their diminished value. Rather, the landlords' claim is for full replacement cost for carpeting that is over three years old and is still in use by the current occupants.

Having not been satisfied the carpets require replacement due to actions of the tenant, or persons permitted on the property by the tenant, I find the landlords' claim for replacement cost to be unreasonable and, therefore, I dismiss their claim.

Monetary Order

As the landlords' claim for damage has been dismissed entirely, I provide the tenant with a Monetary Order in the amount of \$1,200.00 to serve upon the landlords and enforce as necessary in Provincial Court (Small Claims).

Conclusion

The landlords' claim has been dismissed. The tenant has been awarded \$1,200.00 and is provided a Monetary Order in that amount to serve upon the landlords.

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, 2011.

Residential Tenancy Branch