



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for damage to the rental unit, and an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim.

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

This tenancy began on April 1, 2011, with the parties entering into a written tenancy agreement. The rent was set at \$1,200.00 per month, and the Tenants paid the Landlord a security deposit of \$600.00 and a pet damage deposit of \$600.00 at the outset of the tenancy. A term of the tenancy agreement was that the Tenants were allowed two cats in the rental unit.

The Tenants vacated the rental unit at the end of January 2012, and an outgoing condition inspection report was performed on February 5, 2012.

The Landlord testified that during the course of the tenancy he saw that the Tenants had eleven (11) cats in the rental unit. The Landlord testified and submitted evidence that he witnessed cat feces on the carpet in the rental unit when he was in the rental unit.

The Landlord testified that the unit had a strong odour of cat urine and alleges the cats urinated on the carpet.

I note the parties had a few other disputes during the tenancy, which are not relevant to the matters here.

At the end of December 2011, the Landlord wrote to the Tenants and warned them that they would be responsible for any damages the cats caused to the carpets, and therefore, they should have the carpets professionally cleaned or they could face the cost to replace the carpets at the end of the tenancy.

At the end of the tenancy the Landlord had carpet cleaners come in and clean the carpets. According to the Landlord's testimony, the carpet cleaners were unable to remove the smell. The Landlord then had new carpets installed.

The Landlord also claims that due to the condition the rental unit was left in by the Tenants, he lost a month of rent in February of 2012.

The Landlord claims for \$3,141.04 for replacing the carpets, \$226.69 for the cost of professional carpet cleaners and \$1,200.00 for one month of lost rent.

In support of these claims the Landlord has provided documentary evidence, such as correspondence between the parties, invoices and receipts, and photographs.

In reply, the Tenant testified that the Landlord was mistaken when he claimed to see cat feces on the carpet. The Tenant explained this was actually a hairball, not feces.

The Tenant testified that when they vacated the rental unit it was thoroughly cleaned and all areas of concern had been dealt with prior to the end of January 2012.

The Tenant testified that the cleaning in the rental unit usually takes two weeks to dissipate odours in the rental unit.

The Tenant states that the carpet cleaners took their information from the Landlord and were simply out to get the cleaning charges from the Landlord.

The Tenant denies that the carpets required replacing and testified that he is not the Landlord's partner in business. The Tenant alleges they are not responsible to the Landlord for the replacement of the carpets.

The Tenant further testified that he had cleaned the carpets himself with a cleaning fluid and by using blotting. He testified he did not use a carpet cleaner because these simply move the dirt around on the carpet and does not remove the dirt.

The Tenant agrees there were times when the Tenants had more than 2 cats in the rental unit, however, the Tenant was vague and unresponsive as to the actual number of cats in the rental unit.

The Tenant testified they brought in a trailer to have more of an area to house the cats. The Tenant testified and submitted evidence that they were taking care of the cats of two different relatives, who were no longer able to take care of their pets.

The Tenant also submits that the Landlord may not claim for loss of rent for February as the Landlord did not check off the box for this in his Application.

Analysis

Based on the above, the testimony, evidence and photographs, and on a balance of probabilities, I find that the Tenants have breached section 37 of the Act by failing to return the rental unit reasonably clean and undamaged to the Landlord.

In the normal course of a tenancy renters are not required to repair reasonable wear and tear to the rental unit.

However, in this case I find that the Tenants left the carpets damaged by pet stains. The carpets could not be cleaned and had to be replaced because the number of cats the Tenants brought into the rental unit caused damage.

The Landlord's testimony and photographs, as well as the remarks made by the carpet cleaner on their invoice to the Landlord, lead me to find the carpets were stained and damaged beyond reasonable wear and tear. I also note the carpets were not professionally cleaned when the Tenants vacated, which is required under the Act and policy guidelines.

I accept the evidence of the Landlord over that of the Tenant as I found that the Tenant was intentionally vague in some of his testimony and often avoided direct answers to issues or questions raised. Based on this and his demeanour during the hearing, I found that much of the evidence of the Tenant lacked credibility.

I find that due to the carpet damage caused by the Tenants, that the Landlord has suffered a loss of rent for one month in the amount of **\$1,200.00**. The Landlord was required to clean and then replace the carpets because the Tenants had too many cats in the rental unit and had left the carpets damaged. The breach of the Act by the Tenants prevented the Landlord from having anyone else rent the unit in February of 2012.

Pursuant to section 64(3)(c) of the Act, I amend the Landlord's Application to include a request for a monetary order for this loss of rent and for compensation under the Act or tenancy agreement. It is clear in the particulars of the Application, the calculation of the monetary order sought, and in the evidence of the Landlord that he was claiming \$1,200.00 for a loss of rent for one month. As the amount of one month of rent is an itemized sum and included in the calculations of the total amount claimed against the Tenants, I find they had prior knowledge of this claim in the Landlord's Application and therefore, their natural justice rights are not prejudiced by this amendment.

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 losses.

Under policy guideline 40, I find that the useful life expectancy of the carpets was 10 years and the Landlord has testified the carpets were five years old. I accept the Landlord's testimony in this regard and I allow the Landlord 50% of the cost of replacing the carpets, in the amount of **\$1,570.52**. I also allow the Landlord **\$226.69** for the cleaning of the carpets.

Therefore, I find that the Landlord has established a total monetary claim of **\$2,997.21** comprised of the above described amounts.

I order that the Landlord retain the security and pet deposits in the amount of **\$1,200.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,797.21**. This order must be served on the Tenants and 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 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: April 16, 2012.

Residential Tenancy Branch