



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for an order for the return of double their security deposit and a cross-application by the landlords for a monetary order and an order permitting them to retain the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Are the tenants entitled to an award of double their security deposit?
Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2009 and ended on March 6, 2012 and further agreed that on November 15, 2009, the tenants paid a \$650.00 security deposit. The parties also agreed that at the beginning of the tenancy, they did not complete an inspection or generate a condition inspection report.

The tenants testified that on or about March 8, they mailed the landlords their forwarding address via registered mail which was returned to them as unclaimed. The landlords testified that they were out of the country for most of March and did not discover the card from Canada Post advising of registered mail until they returned in April, at which time they were advised that the letter had already been returned to the sender.

Although the parties agreed that the tenancy ended on March 6, they agreed that the tenants had moved most of their belongings from the unit by the end of February. The landlords accessed the rental unit in early March and began cleaning, painting and removing carpets.

The landlords seek to recover \$465.00 as the cost of repainting the rental unit. They testified that the walls in the unit were not cleaned and that there was damage to the

walls in several places, including areas in which the tenants had installed shelving, a mirror and a hanging lamp, using wall anchors to hold those items. The landlords testified that the unit was new in 2007 and that it had not been painted before the tenants occupied it. The tenants testified that the landlords told them in February that the unit would be repainted, so they didn't see the need to clean the walls. They testified that some of the damage to the walls was there when they moved into the unit and produced an email in which they advised the landlord of the damage. The tenants argued that the use of wall anchors was not forbidden and that they expected that they would be permitted to hang items on the walls during their tenancy.

The landlords acknowledged having told the tenants that they would be repainting the rental unit and further acknowledged having been told about the damage to the walls, but said that if they had realized how extensive the damage was, they would have repaired it during the tenancy rather than waiting until the end after the damage had become worse.

The landlords also seek to recover the \$1,497.59 cost of new carpet, the \$470.68 cost of installing the new carpet and the \$10.00 cost of discarding the old carpet. They testified that the carpet had one minor stain at the beginning of the tenancy, but at the end of the tenancy it was stained throughout and torn and stained by the front entry. The landlords provided photographs showing the condition of the carpet. They testified that they did not try to clean the carpet because it was "way beyond cleaning".

The tenants testified that when they moved into the rental unit, the landlords told them that they intended to replace the carpet. They further testified that the carpet was already badly stained and the area by the front entryway frayed and lifting when they moved in. The tenants produced an email from the beginning of the tenancy in which they advised the landlords of a stain in another area.

Both parties seek to recover the filing fee paid to bring their applications.

Analysis

Section 38 of the Act provides that landlords must return the security deposit or file a claim against it within 15 days of the later of the end of the tenancy or the date they receive the tenants' forwarding address in writing. I accept that the landlords did not receive the forwarding address that was sent via registered mail on March 8, 2012. Although the Act deems documents to be received 5 days after mailing, this is a rebuttable presumption and I find that the landlords have rebutted the presumption. Although the tenants provided their forwarding address on their application for dispute resolution, I find that this cannot satisfy the requirement of providing their forwarding

address in writing as it was not given for the purpose of triggering the return of the security deposit, but rather to advance a claim. I find that the tenants' claim for double the deposit was premature and accordingly I dismiss the claim.

Residential Tenancy Policy Guideline #40 identifies the useful life of interior paint as 4 years. I find that the unit was last painted in 2007 and that the useful life of the paint had expired. Although the damage caused by the wall anchors was in my opinion excessive, I find that because the landlords would have had to repaint the unit in any event, the landlords should bear the cost of painting. I therefore dismiss the claim for the cost of painting.

Considering the fact that the tenants took the time to email the landlords and describe damage to the unit discovered at the beginning of the tenancy, I find that the only stain on the carpet at that time was a stain in the living room acknowledged in the landlords' email of December 2, 2009. I find it more likely than not that had the entire carpet been stained and damaged as is shown in the photographs taken at the end of the tenancy, the tenants would have reported this to the landlords. I specifically find that the carpet was not damaged near the entryway as alleged by the tenants. While the landlords had contemplated replacing the one area that was stained, I find no compelling evidence to show that the tenants were told that the landlords intended to replace the carpet.

I find that the tenants were obligated to clean the carpet at the end of the tenancy. Although the landlords accessed the unit prior to the end of the tenancy and removed the carpet, the tenants did not suggest that they intended to clean the carpet.

The difficulty with the landlords' claim is that they did not first attempt to clean the carpet to determine whether the entire carpet had to be replaced. Instead, they chose to replace the carpet without making any attempt to clean it. Although they claimed that they acted on the advice of a carpet professional, they did not produce that professional at the hearing.

I am satisfied that the area near the entryway of the unit could not have been cleaned or repaired and that it required replacement but I am not persuaded that the remainder of the carpet could not have been cleaned. I find that the carpet was 5 years old.

Residential Tenancy Policy Guideline #40 identifies the useful life of carpet as 10 years. I find that the \$1,978.27 claim for the cost of replacing the carpet must be reduced by half to reflect that the carpet had only half its useful life remaining. Because I am not satisfied that the entire carpet needed to be replaced, I find that the remaining \$989.14 must be reduced by 80% to show that only part of the carpet was proven to require replacement. I award the landlords \$197.83.

As the tenants' claim has been dismissed, they will bear the cost of their filing fee. As the landlords have been only partially successful in their claim, I find that the parties should share the cost of the landlords' fee and I award the landlords \$25.00 for a total award of \$222.83.

Because the landlords did not complete a condition inspection of the unit and generate a condition inspection report and the beginning and end of the tenancy, I find that they have extinguished their right to claim against the security deposit pursuant to sections 24(2) and 36(2) of the Act. However, there is nothing in the Act barring the landlords from making a claim for damages and pursuant to section 72(2)(b), I find it appropriate to apply the security deposit to the amount owing to the landlords.

I order the landlords to retain \$222.83 from the security deposit and to return the balance of \$427.17 to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$427.17. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants' claim for double the security deposit is dismissed. The landlords will retain \$222.83 from the security deposit and are ordered to return the balance of \$427.17 to the tenants.

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: June 26, 2012

Residential Tenancy Branch