



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD

Introduction

This hearing was scheduled to hear the landlord's application for a Monetary Order for damage to the rental unit and authorization to retain the security deposit. 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.

Preliminary and procedural matters

In this decision any reference to "the landlord" includes the landlord's spouse. During the hearing, the landlord's spouse often made submissions on behalf of the named landlord and provided responses to the tenant's submissions. I noted that the landlord's spouse was also a signatory on the signature page of the tenancy agreement. It was also apparent that most communications and interactions were between the tenant and the landlord's spouse during the tenancy. I am satisfied the landlord's spouse was acting on behalf of the landlord during the tenancy or otherwise meets the definition of landlord under the Act.

At the commencement of the originally scheduled hearing I determined that the tenant had not served her evidence package upon the landlord. The parties were informed that the tenant's evidence package would be excluded but that the tenant would be provided the opportunity to submit evidence verbally.

During the hearing the tenant was referring to and reading from documents included in her evidence package, as permitted. The landlord indicated he was not familiar with the documents the tenant was referring to or reading from without seeing it. I determined it appropriate, and in the interest of procedural fairness, to adjourn the hearing and order the tenant to serve her evidence package upon the landlord.

The hearing reconvened on May 22, 2012 and both parties appeared. Both parties confirmed service of the tenant's evidence package upon the landlord and service of a

further evidence package from the landlord. I have considered all documentation and photographic evidence submitted to me in making this decision.

The tenant requested that she be awarded double the security deposit as the landlord failed to file this Application for Dispute Resolution within 15 days of receiving the tenant's forwarding address in writing. The landlord was of the position she did file within 15 days. As the landlord was not prepared to respond to this issue and claimed she could obtain evidence to show she did file within 15 days I informed the parties that the tenant was at liberty to file her own application seeking doubling of the security deposit. Thus, in this decision any award to the landlord for damages or loss has been deducted from or offset by the security deposit without being doubled.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation of \$1,700.00 from the tenant for carpet damage and a missing key?
2. Is the landlord authorized to retain all or part of the tenant's security deposit in satisfaction of the amounts owed to the landlord?

Background and Evidence

I was provided the following undisputed evidence:

- The tenant paid a \$425.00 security deposit on July 1, 2007 for a tenancy that commenced July 1, 2007;
- The rental unit was located on the ground floor and was complete with an outdoor patio area;
- The tenant resided in the unit with a dog;
- The parties participated in a move-in inspection together and a report was prepared by the landlord July 1, 2007;
- The parties participated in a move-out inspection together and a report was prepared by the landlord February 3, 2012;
- The tenant did not authorize any deductions from her security deposit in writing; and,
- The tenant provided her forwarding address on the move-out inspection report.

The landlord is seeking compensation of \$50.00 for replacement of a parking key not returned by the tenant. The tenant agreed to compensate the landlord \$50.00 for the missing key.

The landlord is seeking compensation of \$1,650.00 from the tenant for the cost of removing and replacing carpeting in the rental unit. This was the primary focus of the dispute between the parties and I have summarized their respective positions below.

Landlord's position

The landlord purchased the rental unit in 2007 and in the months preceding that purchase new carpeting was installed by the seller. At the end of the tenancy the carpeting was stained, bleached, and ripped. The tenant had advised that she had the carpets professionally cleaned at the end of the tenancy. After the tenancy ended the landlord had a carpet cleaner attend the unit but after some spot cleaning was performed the carpet cleaners informed the landlord there was no guarantee the stains would be removed. The landlord did not proceed with further cleaning and paid \$75.00 for this appointment.

The landlord proceeded to obtain four estimates for removal and replacement of the carpeting. One written estimate was submitted with the landlord's evidence package. The landlord submitted that this is the lowest estimate that was received. The estimate totals \$1,650.00 for carpet removal and replacement with HST.

The landlord was of the position the carpeting is in need of replacement but acknowledged that it has not replaced as of the date of this hearing. The landlord explained the reasons for not replacing the carpeting are as follows: 1) the current tenants are waiting for the resolution of this dispute; 2) the current tenants are using area rugs over the stained areas; and 3) the landlord did not want to risk destroying evidence that may be necessary for this proceeding.

Tenant's position

The tenant submitted that the carpeting had a cat urine smell at the beginning of the tenancy and the landlord attempted to clean it with bleach which caused the bleach stains. Further, the landlord was supposed to clean the patio at the beginning of the tenancy which was not done. These issues were identified on the original move-in inspection report which the tenant provided as evidence. The move-in inspection report provided by the landlord as evidence is not the original report prepared at the beginning of the tenancy and provides a very different description of the rental unit. For example:

- The original move-in report describes the carpets as being in "fair" condition and in the section that provides for repairs to be completed at start of tenancy it states: "1. Clean back area 2. Investigate carpet clean".

This report was signed by the landlord and the tenant indicated she agreed with the report.

- The move-in column of the inspection report completed by the landlord at the time of the move-out inspection shows the condition of the carpeting to be “new” and there are no notations about cleaning the patio or investigating the carpet cleaning at the start of the tenancy.

The tenant further submitted that during her tenancy there were water leaks in the rental unit and common hall and other parts of the building which resulted in wet carpeting in the rental unit. The tenant had evidence of email communication with the landlord about the wet carpeting.

The tenant acknowledged some responsibility for stains in the carpet caused by her dog coming in from the patio but apportions some of the resulting stains to the landlord not following through with her requests for power washing the algae from the patio.

The tenant was of the position the landlord has failed to take into account the pre-existing odour and stains, the age of the carpeting, normal wear and tear, and the water leaks in making this claim against her.

Landlord's response

The landlord initially indicated that he was unaware of any water leak in the rental unit except for an overflowed toilet years prior. The landlord submitted any leaks were outside of the unit. However, the landlord also stated that at the end of the tenancy a water leak stain was visible on the ceiling in the rental unit which the landlord submitted demonstrates the tenant failed to fulfill her duties to notify the landlord of such issues. The landlord acknowledged that periodic inspections of the unit were not undertaken by the landlord.

The landlord did not recall a cat urine odour at the beginning of the tenancy. However, the landlord acknowledged that the landlord did not use the originally prepared move-in inspection report in completing the move-out inspection report. The only inspection report provided by the landlord for this proceeding was the one completed at the time of the move-out inspection.

The landlord submitted the tenant could have borrowed the landlord's power washer to power wash the patio but she did not. Rather, the landlord was of the position the tenant was negligent in not sweeping up leaves and other debris from the patio.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

The Act requires that a tenant leave a rental unit reasonably clean and undamaged at the end of the tenancy. If the tenant does not fulfill these requirements then the tenant has violated the Act and the tenant may be held responsible for compensating the landlord for the value of the loss associated to the violation.

In this case, the tenant has acknowledged some responsibility for stains on the carpet and I find that there is sufficient basis to find the landlord entitled to compensation from the tenant for carpet damage. However, I find the landlord's request that the tenant be held responsible for the entire cost of removal and replacement of all of the carpeting to be completely unreasonable for the reasons submitted by the tenant and as provided below.

1. Section 21 of the Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is the best evidence of the condition of a rental unit in a dispute resolution proceeding. I accept that the move-in inspection report submitted by the tenant is the best evidence of the condition of the carpet at the beginning of the tenancy. It reflects the carpeting as being in "fair" condition which is inferior to the other ratings available on the form. I find, on the balance of probabilities, that the inferior rating was given to reflect either odorous or stained carpeting as evidenced by the landlord's notation to "investigate carpet clean" on the report.
2. The tenant's copy of the move-in inspection report satisfies me that the landlord had agreed to clean the patio and the photographs demonstrate that the patio was prone to a build up of algae and plant debris. I accept that the carpeting would be subject to staining from the tenant's dog tracking in debris and algae

from the patio. I find both parties equally responsible for the staining by the patio door as the landlord did not clean the algae of the patio and the tenant did not ensure her pet's feet were clean upon coming in from the patio. I further find, based on the photographs and the balance of probabilities, that the tenant is responsible for a stain located by a computer desk.

3. Upon review of the photographs and email communication between the parties, I am satisfied the carpeting was subject to water damage during the tenancy. I have not been provided sufficient evidence to conclude the tenant was responsible for any water leaks.
4. Awards for damages are intended to be restorative, meaning a claimant should not be in a better position as a result of an award. Where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the carpeting due to normal wear and tear I have referred to Residential Tenancy Policy Guideline 40. Carpeting has a normal useful life of approximately 10 years and I estimate the age of the carpeting was five years old at that the end of the tenancy based upon the information provided to me by the landlord.
5. The landlord has not yet replaced the carpeting which I find to be inconsistent with the landlord's position that the carpet is in need of replacement due to the actions of the tenant.

Taking all of the foregoing into account, I reject the landlord's position that the tenant should be held responsible for the entire cost of carpet removal and replacement. Rather than dismiss the landlord's claim for carpet damage entirely, in recognition of the tenant's partial responsibility, I provide the landlord an award based upon a reasonable approximation of the tenant's contribution to the diminished value of the carpeting. I award the landlord \$200.00 for carpet damage.

In addition to the above award to the landlord I add the \$50.00 agreed to by the tenant for the missing garage key.

I make no award for the filing fee.

By way of this decision the landlord is authorized to deduct \$250.00 from the tenant's security deposit. The landlord is ordered to immediately return the balance of the security deposit, plus accrued interest, to the tenant. I calculate the accrued interest to be \$9.63.

The tenant is provided a Monetary Order for the balance of the security deposit and accrued interest in the amount of \$184.63 [$\$425.00 + \$9.63 - \250.00] to serve upon the landlord and enforce as necessary.

The tenant retains the right to file her own Application for Dispute Resolution for doubling of the security deposit if she chooses to pursue that matter.

Conclusion

The landlord has been awarded \$250.00 and is authorized to deduct that amount from the security deposit. The landlord is ordered to immediately return to the tenant the balance of the security deposit and interest in the amount of \$184.63. The tenant has been provided a Monetary Order in the amount of \$184.63 to ensure payment is made.

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 21, 2012.

Residential Tenancy Branch