



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords' application for a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a monetary order for damage to the unit site or property?
- Are the landlords entitled to keep the tenants security deposit?

Background and Evidence

The parties agree that this tenancy started on February 01, 2011. This was a fixed term tenancy which reverted to a month-to-month tenancy at the end of the fixed term. The tenancy ended on May 31, 2012. The tenant paid a monthly rent of \$1,075.00 per

month which was due on the first day of each month. The tenant paid a security deposit of \$500.00 on January 2, 2011.

The landlords testify that they completed a move in condition inspection with the tenant at the start of the tenancy and at the end of the tenancy the landlord and tenant attended the unit but did not complete the condition inspection as the landlords felt everything in the unit was fine and they did not have the condition inspection form with them. The landlords testify that they completed the move out condition inspection report after they had met with the tenant and sent the tenant a copy of this by e-mail to sign. The landlords testify that they indicated on the form that there was a problem with a carpet in one of the bedrooms and some paint on that bedroom's Wall. The landlords testify that the tenant refused to sign this report and a copy of the report has been provided in evidence.

The landlords testify that there was a smell of cat urine in one of the bedrooms as indicated on the move out condition inspection report. The landlords thought that they would be able to air this room out and the smell would disappear as they had had no experience with pets before. The landlords testify that they could not air the room out to remove the smell so they cleaned the carpets two or three times with a pet odour cleaning chemical. This did not remove the cat urine smell so the landlords sought professional advice from a carpet company. The carpet company advised the landlords that the carpet and underlay would have to be removed in order to remove the cat urine smell. The landlords replaced the carpet and the underlay and the landlords seek to recover the sum of \$248.86 for this cost. The landlords also seek to recover the costs incurred to install the new carpet and underlay at a sum of \$190.00.

The landlords testify that the tenant had kept a cat litter box in this bedroom and the staining they found on the flooring under the carpet was directly by this cat litter box. The landlords testify that the carpets were three years old.

The landlords testify that there was evidence on the walls of cat urine overspray. The landlords attempted to clean the walls with bleach to remove this but found they were unsuccessful and the walls had to be repainted in this area. The landlord seeks to recover the sum of \$45.76 for the paint used for this work. The landlords testify that the unit had been newly painted three years prior to this tenancy commencing.

The tenant disputes the landlords claim. The tenant testifies that the landlords were in the suite several times showing the place to prospective tenants and no one ever commented on an odour. The tenant testifies that the previous tenants had also had a pet. The tenant agrees that her cat litter box was located in this bedroom.

The tenant testifies that the landlords did not want to complete the move out condition inspection form and no inspection took place, they simply met in the kitchen and the landlord said that everything in the unit was fine.

The tenant testifies that she had agreed to pay half of the carpet costs but was not admitting that in doing so her cat had caused the damage to the carpets. The tenant testifies that she simply agreed this to prevent this matter coming to a hearing.

The landlords testify that the previous tenants did not have a cat they had a pet dog. The dog did not have a litter tray located in this bedroom and the previous tenant's bed was placed directly over the area that was later stained by this tenant's cat.

Analysis

I have reviewed the documentary evidence and verbal testimony before me. I refer the parties to section 36 (2)(c) of the *Act* which states:

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Consequently I find that the landlords have extinguished their right to file a claim to keep the security deposit. However, it is my decision that the landlords have provided sufficient evidence to prove that the carpets were damaged with Cats urine and it is reasonable assumption that this damage was caused by the tenants cat the landlords are therefore entitled to recover some costs for the replacement and installation of new carpets and underlay. The landlords agree that the carpets were three years old therefore I have reduce the landlords claim to account for depreciation of these carpets. The landlords are therefore entitled to a monetary award of 70% of the cost incurred to a sum **\$307.20**.

I also find that the landlords have provided sufficient evidence to show that the walls of this bedroom had been sprayed with cat urine and I am satisfied that the landlord's took steps to mitigate or minimise the loss incurred by attempting to clean the walls with bleach. As this was unsatisfactory the landlord's had to paint the walls. Consequently I find the landlords are entitled to recover the costs of the paint to sum of **\$45.76**.

Sections 38(4), 62 and 72 of the *Act* when taken together give the director the ability to make an order offsetting damages from a security deposit where it is necessary to give effect to the rights and obligations of the parties. Consequently, I order the Landlords to keep **me** from the tenant's security deposit to compensate the landlords for the damages.

As the landlords have been partially successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee for this proceeding from the tenant pursuant to section 72 (1) of the *Act*.

The balance of the security deposit must be returned to the tenant as follows:

Replacement carpet and underlay	\$307.20
Paint	\$45.76
Filing fee	\$50.00
Subtotal	\$402.96
Less security deposit	(-\$500.00)
Balance of security deposit to be returned to the tenant	\$97.04

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. The landlords are entitled to keep the sum of **\$402.96** from the tenant's security deposit.

A Monetary Order has been issued to the tenant for the sum of **\$97.04**. The order must be served on the landlords and is enforceable through the Provincial Court as an order of that Court.

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: August 08, 2012.

Residential Tenancy Branch