



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response 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 tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues; and to recover the filing fee from the tenants for the cost of this application.

The tenants, the landlord and the landlord's wife attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch in advance of this hearing. The tenants provided evidence to the landlord in advance of this hearing. The tenants stated that they did not receive the landlord's evidence package until the day before the hearing. I offered to adjourn the hearing to allow the tenants to consider and respond to the landlord's evidence. The tenants declined this offer to adjourn and sought to continue with the hearing. The landlord was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

- Is the landlord entitled to keep the tenants security and pet deposits?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- What are the landlords other issues?

Background and Evidence

The parties agree that this tenancy started on May 01, 2011 for a fixed term of one year. At the end of the fixed term another tenancy agreement was entered into for a further one year fixed term with the option for the tenants to end the tenancy after six months. The tenancy ended on October 31, 2012. Rent for this property was \$2,750.00 raising to \$2,860.00 during the second fixed term. The tenants paid a security deposit of \$1,375.00 and a pet deposit of \$1,375.00 on May 01, 2011. The tenants gave the landlord their forwarding address on October 31, 2012.

The landlord's wife testifies that the property was a brand new show home when the tenants moved in. The landlord testifies that they did a walk through inspection with the tenants at the start of the tenancy however as the property was brand new there were only two remarks made on the inspection report. The landlord agrees they did not ask the tenants to sign the report to agree to the condition of the property. The landlord testifies that at the end of the tenancy the tenants asked the landlord to attend a move out inspection at dusk and the light was poor. The landlord testifies that he had taken a copy of the inspection report but later could not find the report so had to make notes on a piece of cardboard. The landlord testifies that they were not aware at that time of the rules and regulation concerning inspection reports.

The landlord's wife testifies that the landlord informed the tenants that he had misplaced the inspection report but would get a copy to the tenants and get the tenants to sign it. The tenants informed the landlord that they were leaving town on November 02, 2012 and when the landlord tried to contact the tenants to let the tenants know he had

completed the inspection report for them to sign he could not get hold of the tenants. The landlord's wife testifies that they sought advice from the Residential Tenancy Office and were advised to file an application as they must file within a time frame if applying for the security deposits.

The landlord testifies that during the move out inspection it was identified that there was dog urine stains on the master bedroom carpet. These stains were approximately 9" X 12" in size and were located near the entrance to the on suite bathroom and the middle of the carpet where the end of the tenants' bed was located. The landlord testifies that he advised the tenants that he would decide what action to take concerning the dog urine stains. The landlord testifies that no further stains were identified on the family room carpet at that time as the light was poor due to the time of day.

The landlord testifies that when the new tenants were moving in they informed the landlord of a strong smell of dog urine in the lower family room. The landlord contacted the tenant to get the name of the carpet cleaner the tenants had used and the landlords contacted the carpet cleaning company and the same carpet cleaner returned to the property with the landlord on November 02, 2012 to look at the carpet in the family room and master bedroom. The landlord testifies that the carpet cleaner informed the landlord that he was told to clean areas where the dog had urinated. When the carpet cleaner went to the family room he informed the landlord that the tenants had instructed the carpet cleaner to clean certain areas where their dog had urinated. The landlord testifies that at that time both the carpet cleaner and landlord could see staining on the carpet and areas that appeared to have been rubbed by the tenants with chemicals.

The landlord testifies that this is a large home with over 4,400 square feet. The damaged carpet in the family room is about 1,500 square feet. The landlord testifies that they had hoped to just patch areas of the carpet but were advised against this from a person at Flooring Canada due to colour matching. The person from the flooring company also advised that the dog urine would have soaked into the underlay and subfloor which would also have to be replaced and treated. The master bedroom carpet

could not be replaced or patched as that type of carpet is no longer available so the bedroom and the walk in closet carpet all had to be replaced. The landlord testifies that they had an initial quote for the master bedroom carpet of \$2,409.28 plus HST. This carpet has now been replaced however the cost was higher than estimated as they could not get the same carpet as it is no longer available and the total amount including labour and HST was \$3,137.91.

The landlord testifies that the tenants were allowed to have one small 8 lb dog as agreed on their tenancy agreement. The tenants had informed the landlord that their dog was house trained; however on a visit to the property in September, 2012 to show a prospective tenant the property the male tenant told the landlord to ignore a wet spot on the carpet where he had just cleaned up dog urine. At that time the landlord also noted that there were two dogs in the property and two dog kennels in the kitchen.

The landlord testifies that the lower family room carpet has not yet been replaced but the quote for this is \$10,856.40 plus HST. The landlord's wife testifies that they tried to contact the tenants to negotiate a settlement and to try to resolve these issues but were unable to do so. The landlord has provided a copy of the inspection reports; a letter from Flooring Canada concerning the pet urine stains; a quote for the carpet replacement; the invoice for the actual carpet replacement in the master bedroom; and photographs of the carpets in question in documentary evidence.

The landlord testifies that the master bedroom on-suite bathroom has not been left in an unclean manner. The grout between the tiles has mildew on them and the landlord testifies that the tenants may not have used the humidistat located in the bathroom or cleaned the tiles properly during their tenancy. The landlord testifies that they have not been able to obtain a quote to replace the tiles and have contacted at least six different tiling companies to obtain a quote but no one appears to be interested in doing this work.

The landlord has provided some photographic evidence showing the tiles in the on-suite and a copy of the inspection reports detailing the on-suite in documentary evidence. The landlord testifies that there was other damage identified on the move out inspection such as a damaged lock, the filters in the furnace were left dirty, the central vacuum bag was missing, the rope lighting in two areas required repair and dog feces left in the garden. The landlord testifies that as they were hoping to negotiate a settlement with the tenants they did not include this damage in their claim.

The tenants dispute the landlords claim for replacement carpets. The tenant (AS) testifies that the landlord did not comply with the tenancy *Act* with regard to completing a move in or a move out condition inspection report at the start and end of the tenancy. The tenant testifies that the landlord only did a walkthrough of the property with the tenants at the start of the tenancy and no report was completed at that time or given to the tenants to sign. At the end of the tenancy the landlord wrote a few notes on a piece of cardboard with a pencil of which the landlord has provided a photograph in evidence. The landlord then later filled in an inspection report and sent it to the tenants. The tenants were not asked to sign either report and could not agree or disagree with the condition of the rental unit at the start and end of the tenancy. The tenant testifies that they received a list of deficiencies from the landlord on November 08, 2012 and the inspection reports on November 20, 2012.

The tenant AS testifies that during the move out inspection one dog urine stain was identified on the master bedroom carpet and this would not require the entire carpet including the walk in closet having to be replaced. There was no mention of any stains in the family room carpet. The tenant testifies that on November 01, 2012 the landlord asked the tenant to get their carpet cleaners back in because the new tenants were complaining about a dog urine smell. The tenant testifies that the landlord accused the tenants of not having the family room carpet entirely cleaned which is untrue. The tenant testifies that they did not use chemicals on the carpets but did clean areas themselves with a Bissell carpet cleaning machine.

The tenant AS disputes the landlords quotes for carpet cleaning and states the address on the quotes is for a lot number and not the rental property address. The tenant also states that the landlord has not provided a receipt for the master bedroom carpet replacement at the hearing. The tenant testifies that Flooring Canada came into the property to look at the carpets after the new tenants had moved into the property. How does the landlord know therefore, that the stains were the fault of the tenants and not caused by the new tenants. The tenant testifies that they had asked their carpet cleaner to spend extra time on the pet stain on the master bedroom carpet and did not instruct the carpet cleaner to only clean certain areas of the carpet in the family room.

The tenant AS testifies that they contacted Flooring Canada to obtain quotes for the same carpets and were given quotes of \$1,516.00 for the master bedroom carpet and \$1,700.00 for the family room carpet. The tenant questions when the landlords photographs were taken and asks if they were taken before the tenants had moved out and before the carpets had been cleaned as the landlords photographs do not show the track marks from the cleaner. The tenant questions the landlord as to when the landlord entered the rental property and took these photographs as the landlord did come to the property to deal with a water leak on October 18 after the tenants had moved their belongings out but while still in possession of the property. The tenant questions the landlord about entering the property on other occasions between October 23 and October 29, 2012 without the tenants' permission.

The tenant AS disputes the landlords claim for grout and new tiles in the master bedroom on suite. The tenant testifies that they did use the humidistat correctly and the bathroom was cleaned each week by the tenants and every two weeks by the tenants cleaner. The tenants question why the landlord has not provided a quote for this work or a monetary amount.

The tenant AS testifies that they only had one small dog during their tenancy. They did have a second dog they looked after for a few months towards the end of the tenancy but as their evidence shows they have not yet adopted that dog. The tenant disputes

that they did not pick up their dog feces. The tenant testifies that when the landlord first spoke to the tenants about dog feces it was spring time and the tenants were waiting for the snow to melt to clean up after their dog.

The tenant AS states that they do not waive their rights to seek double the security and pet deposits as the landlord has not returned them within 15 days and has extinguished his right to keep the deposits.

The landlord responds to the tenant's testimony and questions and testifies that he could not send the carpet replacement receipt before the hearing as the landlord had just received the receipt. The receipt will be forwarded to the Arbitrator by the Arbitrators request and to the tenants by registered mail after the hearing. The landlord testifies that the actual replacement costs were higher than the original quote as the carpet could not be replaced with the same carpet as it was no longer available.

The landlord responds to the tenants question about the address on the carpet replacement quote. The landlord testifies that the flooring company had fitted the original carpets and had this address on file as it was the original lot number when the property was under construction.

The landlord testifies that he had permission to enter the house after a suspected water leak. The landlord testifies that he did not take any photographs inside the property at that time. The only photograph taken on that day was of the dog feces outside the property. The carpet photographs were taken on November 02, 2012 when the landlord accompanied the carpet cleaner to the property. The landlord testifies he never entered the property without the tenants' permission and the male tenant had given the landlord permission to enter on October 25, 2012 to do some of the minor repairs such as the lock and to change the filter on the furnace.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for the carpet replacement in the master bedroom and the lower family room; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

In light of the evidence presented I am satisfied that the landlord has established a claim for the replacement carpet in the master bedroom. While I have placed very little weight on the move in and move out condition inspection reports as they were not completed in the presence of the tenants and were not signed by either tenants at the start or end of the tenancy; I do find however that the landlord has provided other compelling evidence to establish that the tenants dog or dogs did urinate on the carpet in the master bedroom and family room. The landlord has also established that these urine stains were to such an extent that cleaning alone could not eradicate the urine

stains from either the carpet or the underlay and that the only recourse was to replace the carpets. However, I am not satisfied that the tenants can be held responsible for the cost of the entire carpet as there is a depreciation of two years for the life of the carpet. Consequently I have adjusted the amount due to the landlord to reflect depreciation of 20 percent. ($\$3,137.91 - 20\% = \$2,510.33$) The landlord will receive a monetary award for the sum of **\$2,510.33** for the carpet in the master bedroom.

With regard to the carpet in the lower family room, dog urine stains are often difficult to remove as they often soak into the carpet and through the underlay if not treated immediately. These stains will often show back through after a carpet has been cleaned. The landlord's documentary evidence has established that this carpet was stained with numerous dog urine stains. However, the landlord has not yet had this carpet replaced and therefore I am able to award an amount based on the quote obtained from the flooring company of \$10,856.40 plus HST of \$1,302.76. The tenants argue that they contacted the flooring company and obtained lower quotes for both the master bedroom carpet and the family room carpet however the tenants have provided no evidence of either these quotes or that any quotes made were based on a like for like carpet. Therefore I am applied the same principal to deduct depreciation of 20 percent from the cost of the family room carpets and therefore the landlords claim is adjusted to $\$12,159.16 - 20\% = \mathbf{\$9,727.33}$.

With regards to the landlords claim for replacement tiles in the master bedroom on-suite bathroom; I am not satisfied in this instance that the landlord has met the test for damages to the tiles. Having reviewed the photographic evidence provided by the landlord it is my decision that the landlord has not shown what steps were taken to attempt to clean the grout in the tiles or that this mildew was caused by the actions or neglect of the tenants other than through normal everyday use of the bathroom. I further find the landlord has provided no documentary evidence to establish a monetary amount for this section of his claim. Therefore, this section of the landlords claim is dismissed without leave to reapply.

The landlord has mentioned other areas of damage however the landlord has not filed a claim against the tenants for these issues and has not provided any corroborating evidence to support this alleged damage or to meet the test for damage or loss claims. Consequently the landlord's testimony concerning additional damage has not been considered at the hearing.

With regard to the landlords claim to keep the security and pet deposits; I direct the landlord to s. 23 of the *Act* which states that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. The landlord must offer the tenant at least two opportunities for the inspection; the landlord must complete a condition inspection report in accordance with the regulations; and both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations. S. 35(1)(2)(3)(4) of the *Act* states that the landlord and tenant together must inspect the condition of the rental unit before a new tenant begins to occupy the rental unit; two opportunities must be offered to the tenant; the landlord must complete a condition inspection report in accordance with the regulations; and both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

S. 24(2) of the *Act* describes the consequences if the landlord fails to comply with s. 23 and states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with s. 23(3) [*2 opportunities for inspection*]; having complied with section 23(3), does not participate on either occasion, or does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. S. 36(2)(c) of the *Act* states the consequences if the landlord does not comply with s. 35 of the *Act* and states 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 it is my decision that the landlord has not complied with s. 23, 24, 35 and 36 of the *Act* and the landlord has extinguished his right to file a claim to keep either the security deposit or the pet deposit. When the landlord's right to file a claim has been extinguished then the landlord is required to return the security and pet deposits to the tenants within 15 days of either the end of the tenancy or the date the landlord receives the tenants forwarding address. If the landlord does not return the security and pet deposit then the tenants are entitled to recover double the security and pet deposit pursuant to 38(6)(b) of the *Act*.

The tenants have the option to waive their right to the doubling of the security and pet deposits and have declined to do so. Therefore it is my decision that the tenants are entitled to recover the sum of **\$5,500.00** from the landlord.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the filing fee from the tenants of **\$100.00** pursuant to s. 72(1) of the *Act*.

As both parties have an entitlement to a monetary award under the *Act*; s. 38(4), 62 and 72 of the *Act* provide 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 have offset the tenants' award against that of the landlords. The landlord is therefore entitled to a Monetary Order for the following sum

Replacement carpet in master bedroom	\$2,510.33
Replacement carpet in family room	\$9,727.33
Filing fee	\$100.00
Less security and pet deposits	(\$5,500.00)
Total amount due to the landlord	\$6,837.66

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$6,837.66**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The tenants are entitled to double the security and pet deposits to the sum of **\$5,500.00**. This amount has been offset against the landlord's monetary claim.

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: February 14, 2013

Residential Tenancy Branch

