



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MND, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for the cost of repairs.

Despite being served by registered mail sent on February 18, 2013, the tenant did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the *Act* for damages?

Background

The landlord testified that the tenancy began on July 1, 2010. The rent was \$920.00 and a security deposit of \$455.00 and pet damage deposit of \$200.00 were paid. The landlord testified that the tenant vacated in January 2013. The landlord testified that the tenant provided a written forwarding address at the end of the tenancy and this was in evidence on the move-out condition inspection report.

Submitted into evidence, by the landlord, was a copy of the tenancy agreement, a copy of the move-in condition inspection report, a copy of the move out condition inspection report signed by the tenant on January 31, 2013, a copy of a "*Move Out Statement*", a copy of a "*Pre-Moveout Inspection Report*" dated January 16, 2013, and an invoice for carpet installation dated February 8, 2013

Also in evidence was a document titled, "*Agreement*", that contained a list of charges which featured spaces beside each item where the tenant could initial that he or she either agreed or disagreed with each charge.

The landlord testified that, when the tenant vacated, the unit was left in a clean condition with the exception of the carpeting, which, according to the landlord, had been so severely damaged by the tenant's pet, that it needed to be replaced at a cost of \$2,400.00. The landlord testified that the carpets were only 2 and a half years old, as they were newly installed just prior to the tenant taking possession in July 2010. No receipts or other evidence had been submitted to verify the age of the carpets. However, the move-in condition inspection report noted that there was "new carpets" in the living room, dining room, bedrooms and hall.

In support of the claim for reimbursement of the cost of carpeting against the tenant, the landlord made reference to the evidence consisting of the move-in and move out condition inspection reports.

All items and rooms listed on the left side of the move-out inspection report, including the carpets, have a check-mark beside each one of them. However, the landlord pointed out that the checkmarks located beside "*Floors/Carpet*" of each room listed on the report had been circled.

The index/legend on the form shows that a checkmark is to be used to indicate that the item is "*Clean*", the letter "*D*" is to be used to indicate "*Dirty*" and the letter "*M*" is to be used to indicate that the item shown is "*Marked*". The landlord explained that instead of using the designated codes, they chose to use circles around the checkmarks as an indication that the carpet was stained.

The landlord testified that, the tenant was also fully aware that the circled checkmarks indicated that the carpet was damaged and stained.

The landlord's position is that the move out condition inspection report supports the landlord's claim that the tenant should be held responsible for damaging the carpets.

The landlord also made reference to another document attached to the move-in and move out condition inspection reports titled "*Agreement*", which was signed by the tenant and the landlord. This form lists various actions, such as "*carpet cleaning*", "*drape/blind cleaning*", "*painting/wall repair*" and other chargeable tasks, in a column down the left side, with 5 corresponding columns under the headings, "*Amount*", "*Agree*", "*Disagree*" and "*Agree to Partial Amount*".

The landlord acknowledged that the "*Amount*" column contains no dollar amounts, nor charges and shows, "*0*" or "*N/C*" in the amount column beside each task. The landlord pointed out that, despite the absence of any charges listed in the body of the form itself, a notation was written, by the landlord, in the right margin of the page which states:

“Charge \$2400 for carpet replacement. [bad pet damage noted]” (Reproduced as written)

The landlord testified that, in their verbal discussions, the tenant did agree with the landlord’s allegation that her pets damaged the carpet. Although, the tenant had initialled “*Disagree*” beside “*carpet cleaning*”, on the form, the landlord argued that this merely showed that the tenant did not agree with the amounts for replacing the carpets. The landlord testified that the tenant eventually did accept that she had to pay. The landlord was not able to submit any written consent, as this was apparently a verbal conversation.

In support of the claim, the landlord also presented a copy of the carpet-replacement invoice from the contractor showing the cost as \$2,334.08.

The landlord was seeking a monetary order for the cost of new carpets, to keep the tenant’s security and pet damage deposit in partial satisfaction of the claim and the \$50.00 cost of the application.

Analysis:

In regard to an Applicant’s right to claim damages from another party, Section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount of the expenditures incurred to rectify the damage or loss, and
4. Proof that the claimant followed section 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 landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I find that the landlord's move-out condition inspection report does not clearly establish that the carpets were stained, as there were clearly checkmarks placed beside all items, including the carpets. I find that, according to the legend at the bottom of the landlord's form, a checkmark indicates "*Clean*". I find that all of the checkmarks beside "*Floors/Carpets*" appear to have been circled *after* each checkmark was initially placed there.

I find that the symbol to indicate that an item or area is dirty, as specified by the legend at the bottom of the landlord's form, required that the letter "*D*" be used to indicate "*Dirty*" beside items that were found to be soiled or "*M*" to indicate "*Marked*". The carpets of each room did not show "*D*" or "*M*" beside any of them, only the circled checkmarks.

I also note that the landlord's comments at the bottom of the move out condition inspection report are inconsistent with finding destroyed carpets. The comments are:

"excellent condition cleaning great"

In addition to the above, I find that the list of costs on the landlord's "*AGREEMENT*" form, all have the number "*0*" in each of the rows beside them, including the row titled, "*Repair/Replacement/Misc. Charges*".

I also do not accept the landlord's testimony that the "*Agreement*" form supports the landlord's claim for carpet replacement, nor does it verify that the tenant was in agreement with the cost of replacing carpets. I find that the tenant's initial under "*disagree*" actually supports the opposite conclusion.

I accept that the landlord did genuinely incur the expenses that were verified by copies of the carpet invoice. But I find this fact only functions to satisfy element 3 of the test for damages.

Under the Act, move-in and move-out condition inspection reports, entail participation from both parties and function to officially document genuine damage to a rental unit.

While I accept that some documents in evidence do contain comments about carpet damage, I find that the landlord's allegations are not sufficiently supported by the contents of the move out condition inspection reports, which appear to contain contradictory information. Other than a copy of the invoices for the installation of carpeting, I find that no other relevant evidence, such as a written acknowledgement from the tenant that she damaged the carpets, witness statements or photographs were placed in evidence to support the claim.

Given the above, I find insufficient proof to satisfy elements 1 and 2 of the test for damages.

Based on the landlord's evidence, I find that the applicant has not adequately met the burden of proof required to prove the claim. Accordingly, I find that the landlord's application must be dismissed. In light of the above, I hereby dismiss the landlord's application in its entirety without leave to reapply.

I therefore find that the landlord is not entitled to retain the tenant's \$455.00 security deposit or the \$200.00 pet damage deposit, still currently being held in trust for the tenant. I order that these deposits must be refunded to the tenant forthwith.

Accordingly, I hereby grant the tenant a Monetary Order for the return of the security and pet damage deposits in the amount of \$655.00. This order must be served on the respondent and, if unpaid, an application may be filed in Small Claims Court to enforce the order.

Conclusion

The landlord's application and monetary claim is dismissed in its entirety without leave to reapply and a monetary order issued to the tenant for the return of the security deposit.

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: May 09, 2013

Residential Tenancy Branch

