



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for compensation under the Act and the tenancy agreement for loss of rent, for damage and cleaning at the rental unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began with the parties entering into a written tenancy agreement on February 21, 2012, for a tenancy to begin on April 1, 2012. The monthly rent was \$950.00, payable on the first day of each month. The Tenants paid the Landlord a security deposit of \$400.00 and a pet damage deposit of \$100.00 on February 21, 2012 (the "deposits"). The rental unit is a condominium owed by the Landlord.

Both parties agree that no incoming or outgoing condition inspection reports were performed by the Landlord.

On August 15, 2013, the Landlord issued the Tenants a 10 day Notice to End Tenancy for unpaid September 2013 rent. The Landlord testified he issued this Notice early as he was leaving the province and would not be back to collect the rent in September.

On August 15, 2013, the Landlord also issued the Tenants a one month Notice to End Tenancy alleging the Tenants had been repeatedly late paying rent, that they had caused extraordinary damage to the rental unit and that they had failed to repair the damage. The effective date of the Notice was September 30, 2013.

The Tenant testified they vacated the rental unit on or about September 13, 2013. As the Landlord was out of the province they returned the keys to the Landlord by placing them under the door of the rental unit.

The one month Notice to End Tenancy arose as toward the end of the tenancy the parties became involved in a dispute over damage to the living room carpet. The Tenants agree their dog caused some damage to the living room carpet; however, the Tenants argued they should not have to pay the full amount the Landlord wanted for replacement of the carpet, as it was an old carpet when they moved in.

The parties did exchange some written communications in an attempt to resolve the dispute.

For example, the Tenants sent the Landlord a copy of Residential Tenancy Act policy guideline 40, which sets out the useful life expectancy of specified items, including carpets. The Tenants offered to let the Landlord keep the deposits, pay him an extra amount, and offered to remove the carpet before they left in order to save the Landlord some money. The Landlord asserted in these communications that the carpet was going to cost approximately \$1,700.00 to replace, and outlined the other claims he would make against the Tenants.

The Landlord is claiming \$1,595.68 for replacement of the carpet. The Landlord submitted a copy of the invoice for the carpet replacement in evidence. The Landlord has submitted photographs of the carpet and there are long sections of pulls and frayed areas. There are several different photographs of the carpet also provided by the Tenants in evidence.

The Landlord testified he purchased the condominium in 2005. He testified that he replaced the carpet in or about June of 2009, and stated the carpet was about four years old. He testified it was new when installed. He testified he had no other evidence available as to the age of the carpet.

The Landlord testified these were the first Tenants to occupy the rental unit. He stated he had he purchased the condo to live in himself and only rented it when he had to move to a different city in the province in March of 2012.

The Landlord testified he returned to the province in late September and had had no contact with the Tenants since August. He testified he was paid the September rent by the Tenants.

The Landlord also claimed for one month loss of rent in the amount of \$950.00 for October. The Landlord testified he could not rent the unit out for October with the carpet damaged. The Landlord testified he had not advertised the rental unit as of the date of the hearing, as he did not replace the carpet until November and hopes to rent it out again by the end of November.

The Landlord also claims for cleaning an area of the hallway carpet, which he alleges had dog urine on it. The Landlord testified this hallway carpet was cleaned last weekend, apparently referring to the weekend of November 2nd, and it cost him over \$100.00 to clean. He testified he had a company do the work but could not remember the name of the company. The Landlord testified he did not have time to provide the invoice for the hearing.

In reply to the Landlord's claims, the appearing Tenant testified they agreed that their dog had caused some damage to the living room carpet. The Tenant testified that they were always willing to pay the Landlord the actual value of his loss due to the damage from their dog.

The Tenant testified that they had cleaned the rental unit for two days before the vacated. In evidence the Tenants submitted photographs of the rental unit after they had cleaned it. These show various views throughout the rental unit.

The Tenant denied their dog had urinated on the carpet and testified they had cleaned all the carpets in the rental unit except the living room, before the vacated. The Tenant alleged that the living room carpet was older than the four years claimed by the Landlord. The Tenant testified there was a plush carpet in one of the bedrooms that was better quality and condition, and this might have been the new carpet the Landlord was referring to. The Tenant testified that the living room carpet was a different weave from the bedroom and seemed older than four years.

The Tenant testified they were always willing to allow someone into the rental unit to do a consultation on the replacement of the carpet. The Tenant testified there was also nothing preventing the Landlord from at least showing the rental unit to prospective renters. The Tenants offered to remove the living room carpet to lower the cost.

In final reply, the Landlord testified that the plush carpet in the second bedroom was actually the original carpet and he had not replaced it when he replaced the living room carpet.

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 sections 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.

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 *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I accept the testimony and submission of the Tenants that their dog damaged the living room carpet, and therefore find the Landlord has shown a breach of the *Act* and that a loss has occurred. Consequently, in this instance the determination I must make is the value of the losses the Landlord has verified or proven on a balance of probabilities, and to examine whether or not the Landlord mitigated his losses as required under section 7(2) of the *Act*.

Section 7 of the *Act* states:

(1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this *Act*, the regulations or their tenancy agreement **must do whatever is reasonable to minimize the damage or loss.**

[**Emphasis** added.]

In this situation I find the Landlord has failed to prove the age of the carpet that was being replaced. With no incoming condition inspection report there is insufficient

evidence to determine the condition of the carpet at the outset of the tenancy, which may have assisted in ascertaining the age of the carpet.

As described above, prior to the Application of the Landlord being made the Tenants provided the Landlord with a copy of policy guideline 40 to the Act, which sets out the useful life of carpets as 10 years.

The portion of the policy guideline 40 provided to the Landlord also sets out that,

“When applied to damage(s) caused by a tenant, the tenant’s guests or the tenant’s pets, the arbitrator may consider the useful life of a building element and the age of the item. **Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.**

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant’s responsibility for the cost or replacement.”

[**Emphasis** added.]

From the photographic evidence provided by both parties the carpet appears to be older than the four years alleged by the Landlord. It is “Berber” style and appears to be of the standard often provided by building developers. Based on the testimony and the photographs of both parties, on the balance of probabilities, I find it is more likely this original carpet that was in place when the Landlord purchased the rental unit in 2005. I find the Landlord had insufficient evidence to prove the carpet was only four years old or had been replaced four years ago, as I find the Tenants’ evidence and the photographs are more probable evidence. This leads me to conclude that the living room carpet was eight years old when replaced. Applying the useful life expectancy guideline, I find the living room carpet was at 80% of its useful life, and the Landlord is entitled to reimbursement of the remaining replacement value of the carpet at 20% or **\$319.14**.

I dismiss the claim of the Landlord for cleaning the hallway carpet, as I find the Landlord failed to provide sufficient evidence to prove there was a stain in the hallway caused by the Tenants or their dog and therefore, I am unable to find a breach of the Act here.

I also dismiss the claim of the Landlord for loss of rent, as I find he failed to mitigate his losses for the following reasons.

The Landlord testified he was out of the province and did not return until the later part of September. Although the invoice for the carpet is dated October 6, 2013, the Landlord testified the carpet was not installed until November. I find the Landlord has insufficient evidence to show he was unable to rent the unit for October due to the Tenants, particularly when he has not advertised the rental at all or was even in the province in

time to rent for October. The Tenants had vacated the rental unit before the middle of September and had the Landlord been in the province he likely would have been able to initiate the carpet replacement sooner.

In any event, the Landlord testified he was not in the province for most of September, testified he had not advertised the rental unit, and I find he had no evidence he could not have appointed an Agent to help him rent the unit for October while he was out of the province.

Therefore, I do not find the Tenants should be liable for October rent when the Landlord himself was not in the position to rent the unit out or carry out the repairs in a timely manner to minimize the loss claimed against the Tenants, as required under section 7(2) of the Act. I dismiss this claim without leave to reapply.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

This leads me to find that the Landlord has established a total monetary claim of **\$319.14** comprised of the amount awarded for the carpet.

I do not find the Landlord is entitled to recover the filing fee for the Application. The Tenants had offered to settle this matter with the Landlord for an amount greater than what the Landlord proved he was entitled to in this claim. Furthermore, I note the Tenants offered to remove the damaged carpet themselves, in order to mitigate the losses. Therefore, I find the Landlord is not entitled to recover the filing fee for the Application.

I order that the Landlord may retain \$319.14 from the deposit in full and final satisfaction of the claim and I order the Landlord to return the balance of **\$180.86** to the Tenants forthwith.

Pursuant to the policy guidelines on the return of security deposits, I grant the Tenants a monetary order payable by the Landlord under section 67 for the balance due of **\$180.86**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord is entitled to recover 20% of the value of the carpet and may retain \$319.14 from the deposits and is order to return the balance of the deposits of \$180.86 to the Tenants forthwith. The Tenants are granted a monetary order, enforceable in the Provincial Courts, should the Landlord fail to return the balance due to the Tenants.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 08, 2013

Residential Tenancy Branch

