



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for damages;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking an order as follows:

1. Return of double the security deposit.

Both parties appeared, gave 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 at the hearing.

Issues to be Decided

Is the landlord entitled to a monetary order for damages?

Is the landlord entitled to retain all or part of the security deposit?

Are the tenants entitled to double the return of the security deposit?

Background and Evidence

The tenancy began on March 1, 2013. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$750.00 was paid by the tenants. The tenancy ended on September 25, 2013.

Landlord's application

The landlord claims as follows:

a.	Damage to the carpet	\$2,886.15
b.	Damage to the countertop	\$1,233.50
c.	Filing fee	\$ 50.00
	Total claimed	\$4,169.65

Damage to the carpet

The landlord testified that the carpet was a year old when the tenancy commenced and were in good shape.

The landlord testified at the end of the tenancy the carpet was damaged as there were large pulls and runs all over the carpet. The landlord believed the damage was caused by the tenants' dog or their pet macaw scratching at the carpet. The landlord stated there were also several burns in the carpet. Filed in evidence are photographs of the carpet which show large pulls and runs. Filed in evidence is an estimate for repair.

The tenants testified that there were slight pulls in the carpet and when they vacuumed the power head on their vacuum would grab the pull and make a run in the carpet. The tenants alleged the carpet was faulty.

The landlord argued that the tenants never notified her of a problem during their tenancy. The landlord stated at the end of the tenancy they told her the same story and she contacted the carpet company and they attend the residence on two separate occasions and found that the carpets were damaged by abuse and not from any default of the carpets.

The landlord submitted a letter dated December 23, 2013, from the carpet supplier, which in part reads,

“... it is the opinion of the inspectors that there is no fault with the installation or the manufacturing of the carpet. There is clear signs of abuse i.e. burns and pulls”.

[Reproduced as written.]

The landlord further argued that the previous renter, who resided in the unit for one year, had no problems with any carpet pulls or runs.

Damage to the countertop

The landlord testified that the tenants caused damage to the countertop by burning circular holes that went through the surface. The landlord stated that the countertop was 16 months old at the end of the tenancy. The landlord stated that the cost to have the countertop replaced is \$1,050.00 plus GST. Filed in evidence is an estimate for the countertop. Filed in evidence are photographs of the countertop showing circular holes.

The tenants acknowledge that they burnt two holes in the countertop, but indicated they should not be responsible for any of the scratches.

Tenants' application

The tenants claim as follows:

a.	Double security deposit	\$1,500.00
	Total claimed	\$1,500.00

The tenants testified that at the end of the tenancy they gave a sticky note to the landlord which contained their forwarding address.

The landlord denied that the tenants provided her with their forwarding address at the end of the tenancy. The landlord stated that the tenant refused to provide her with their forwarding address and only gave her the general area where they would be residing.

The landlord testified as she had no forwarding address, she contacted them by telephone to notify them that she had a letter that she wanted to send them. The landlord stated because she did not have their address she had to arrange for a courier to meet the tenants at a specific location. Filed in evidence is a letter dated October 15, 2013.

The landlord testified that when the tenants meet the courier on October 16, 2013, at the agreed upon location, the tenants gave the courier their application for dispute resolution. The landlord stated that was the first time she had received their forwarding address. The landlord stated that she filed their application for dispute resolution within the statutory timeline.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the each party has the burden of proof to prove their respective claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

Under section 37 of the Act, the tenants are required to return the rental unit to the landlord reasonably clean and undamaged, except for reasonable wear and tear. Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Damage to the carpet

In this case, the evidence of the tenants' was that the damage to the carpet was caused when their vacuum power head would catch a pull on the carpet and this would cause a run in the carpet. Even if I accepted that, it would have been reasonable to notify the landlord immediately when the first incident occurred, rather than to continue to cause further damage to the carpet by continuing to use the vacuum power head.

I accept the damage was cause, by the action and neglect of the tenants as there was no damage to the carpets at the start of the tenancy. I find the tenants have breached

section 37 of the Act, when they failed to repair the damaged that was caused by their vacuum and this caused losses to the landlord.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the carpets had a useful life span of ten years, and the carpet were sixteen months old, the landlord is entitled to the depreciated value of 87 percent of the original value.

In this case, the landlord has submitted an estimate in the amount of \$2,576.92, plus GST. However, I find that estimate also included underlay and there was no evidence during the hearing that the underlay was damaged by the tenants. As a result, I have deducted the full amount of the underlay and reduced the labour cost by half. Therefore, I find based on the estimate of the carpet, half the labour and GST equals the amount of \$1,569.19. Therefore, I find the landlord is entitled to recover the depreciated value of 87 percent in the amount of **\$1,365.19**.

Damage to the countertop

In this case, the tenants acknowledged that they burnt at least two holes in the countertop, although the photographs depict more. I find that burning holes does not constitute normal wear and tear. I find the tenants have breached section 37 of the Act, when they failed to repair the damage countertop at the end of the tenancy and this caused losses to the landlord.

Under the Residential Policy Guideline #40, if an item was damaged by the tenant, the age of the item may be considered when calculating the tenant's responsibility for the cost of replacement. As, I have determined that the countertop had a useful life span of twenty five years, and the countertop was sixteen month old, the landlord is entitled to the depreciated value of 95 percent of the original value. The evidence of the landlord was the estimated cost to replace the countertop was \$1,102.50. Therefore, I find the landlord is entitled to compensation for the cost of replacing the countertop in the amount of **\$1,047.37**.

I find that the landlord has established a total monetary claim of **\$2,462.56** comprised of the above described amounts and the \$50.00 fee paid for this application.

Tenants' application

In this case, I prefer the evidence of the landlord over the tenants because the letter of October 15, 2013, confirms the landlord was seeking to obtain the tenants' forwarding address. The letter was served on the tenants on October 16, 2013, by courier who met the tenants at a specific location, not a service address.

I find that if the landlord had the tenant's forwarding address at that time it would have been unlikely that she would hire a courier to meet the tenants, rather than to send the letter by mail.

Further, the tenants provided the courier with their application for dispute resolution. That application contained the tenants address for service. I find on the balance of probability that the tenants did not provide their forwarding address to the landlord, prior to October 16, 2013. The landlord's application was filed on October 30, 2013, claiming against the deposit. I find the tenants have failed to prove the landlord violated section 38 of the Act. Therefore, I find the tenants' are not entitled to double of the security deposit.

Conclusion

As I have found that the landlord has established a total monetary claim of **\$2,462.56**, I order that the landlord retain the security deposit of **\$750.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,712.56**.

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

The tenants' application for double the security deposit is dismissed

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: January 21, 2014

Residential Tenancy Branch

