



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was convened in response to the Landlords' Application for Dispute Resolution, in which the Landlords applied to keep all or part of the security deposit and to recover the fee for filing this Application for Dispute Resolution.

The female Landlord stated that on May 22, 2015 the Application for Dispute Resolution, the Notice of Hearing, and documents the Landlord submitted to the Residential Tenancy Branch on May 28, 2015 were sent to the each Tenant, via registered mail. She stated that these documents were sent to the forwarding address provided by the Tenant, via email, on May 01, 2015. The Landlords submitted Canada Post documentation that corroborates this testimony. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Residential Tenancy Act (Act)*; however the Tenants did not appear at the hearing.

Preliminary Matter

The female Landlord applied to amend the Application for Dispute Resolution to reflect the correct address of the rental unit. She stated that the house numbers of her residential address were somehow listed as the house numbers of the rental unit, which is incorrect. She stated that she is not the Landlord of the address listed on the Application for Dispute Resolution.

I find that the Tenants knew, or should have known, that due to a clerical error the address on the Application for Dispute Resolution was incorrect. Given that the Landlords are clearly identified on the Application for Dispute Resolution and the street on which the rental unit is located has been properly identified, I find it reasonable to conclude that the Tenants were aware these proceedings related to their former residence.

I therefore grant the Landlords' request to amend the Application for Dispute Resolution, and the Application has been amended accordingly.

Issue(s) to be Decided

Are the Landlords entitled to compensation for damage to the rental unit?
Are the Landlords entitled to retain all or part of the security deposit?

Background and Evidence

The female Landlord stated that:

- this tenancy began on December 01, 2013;
- the Tenants agreed to pay monthly rent of \$2,700.00;
- the Tenants paid a security deposit of \$1,350.00;
- the tenancy ended on April 30, 2015;
- the Tenants provided a forwarding address, via email, on May 01, 2015; and
- the Landlords repaid \$544.00 of the security deposit on, or about, May 22, 2015.

The Landlords are seeking compensation of \$756.00 for replacing the carpet in the stairway of the rental unit.

In support of the claim for replacing the carpet the female Landlord stated that:

- when the rental unit was jointly inspected on April 30, 2015 the carpets had recently been shampooed;
- when the rental unit was jointly inspected on April 30, 2015 the smell of the carpet cleaning solvent masked the smell of urine;
- on May 01, 2015 the Landlords cleaned the carpets again because they could detect an odour of cat urine;
- the carpet retained that odour even after the Landlords had cleaned the carpet;
- the carpet in the stairway was replaced as the odour could not be eliminated; and
- the carpet in the stairway was new in 2008.

In support of the claim for replacing the carpet the male Landlord stated that after the rental unit had been vacated he located baseboards in the garage that the Tenants had removed from the stairway, which had been saturated with cat urine.

The Landlords submitted photographs of the carpet in the stairway, which show that the carpet has been exposed to moisture.

The Landlords submitted an invoice to show that the Landlord was charged \$756.00 for replacing the carpet in the stairway.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the undisputed evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the carpet in the stairway reasonably clean and free of odours and that the Landlords were unable to eliminate the smell of urine from the carpet. I therefore find that it was reasonable for the Landlords to replace the carpet.

Claims for compensation related to damage to the rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as carpets and countertops, which are depreciating all the time through normal wear and tear.

The Residential Tenancy Policy Guidelines show that the life expectancy of carpet is ten years. The evidence shows that the carpet was installed in 2008 and was, therefore, approximately seven years old at the end of this tenancy. I therefore find that the carpet had depreciated by seventy percent and that the Landlords are entitled to thirty percent of the cost of replacing the carpet, which in these circumstances is \$226.80.

I find that the Landlords' application has merit that they are entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlords have established a monetary claim, in the amount of \$276.80, which is comprised of \$226.80 for replacing the carpet and \$50.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlords to retain this amount from the Tenants' security deposit in full satisfaction of this monetary claim.

As the Landlord has already returned \$544.00 of the Tenants' security deposit and they have established a right to retain \$276.80 from the deposit, the Landlords must refund the remaining \$529.20 to the Tenants.

Based on these determinations I grant the Tenants a monetary Order for \$529.20. In the event Landlords do not comply with this Order, it may be served on the Landlords, filed with the Province of British Columbia Small Claims Court and enforced 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: October 23, 2015

Residential Tenancy Branch

