



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC, MNR, MNDC, MND

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order, the recovery of the filing fee and an order to retain the security deposit in partial satisfaction of the claim. The tenants have filed an application seeking the return of double the security and pet deposits and the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

Tenants Application

The tenants' testimony is as follows. The tenancy began on May 1, 2014 and ended on May 28, 2015. The tenants were obligated to pay \$3700.00 per month in rent in advance and at the outset of the tenancy the tenants paid an \$1850.00 security deposit and \$1000.00 pet deposit. The tenants stated that they provided their forwarding address in writing on April 28, 2015 to the landlords' agent. The tenants stated a written condition inspection report was conducted at move in but not at move out. The tenants stated that the landlord did not file for dispute resolution within fifteen days of the tenancy ending nor did they return their security deposit. The tenants stated that they are seeking the return of double the security deposit and the recovery of the filing fee.

The tenants are applying for the following:

1.	Return of double the security and pet deposits	\$5700.00
2.	Filing Fee	\$100.00
3.		
4.		
5.		
6.		
	Total	\$5800.00

The landlords' agent stated that he did receive the tenants forwarding address in writing on April 28, 2015.

Landlords Application

The landlords stated that they rented their "fully furnished executive home" to the tenants. The landlord's stated that the tenants' pets damaged the carpet so badly that it needed to be replaced. The landlords' stated that the carpets were stained all over and had a terrible odor of pet urine in them. The landlords stated that they used a black ultraviolet light to see all of the stains. The landlords stated that the entire home had been burned down in 2005 and was completely rebuilt in 2006. The landlords stated that the carpets were in excellent condition. The landlords stated that they had resided in the home on weekends only prior to this tenancy.

The landlords stated that they also discovered that the tenants had damaged a blind and the sofa. The landlords stated that they assume the tenants' child pulled on the blind and damaged it. The landlords stated that the tenants pet made claw marks on the sofa. The landlords stated that the tenants took a shovel that belonged to the landlord's when they moved out. The landlords stated that they were unable to rent the unit for three months due to the condition the house was left in and seek the recovery of loss of revenue for June, July and August 2015.

The landlords are applying for the following:

1.	Carpet Replacement and labour to move furniture	\$16591.71
2.	Blind Replacement	\$347.97
3.	Sofa Replacement	\$616.00
4.	Shovel Replacement	\$33.60
5.	Loss of Revenue June, July, August 2015	\$11,100.00
6.	Filing Fee	\$100.00
	Total	\$29,149.28

The tenants dispute the landlords claim in its entirety. The tenants stated that the home was renovated in 2005 as per an e-mail he received from the landlords' agent. The tenants stated that they did not cause any of the damages as claimed and that even if they had; Residential Tenancy Policy Guideline 40 addresses the useful life of building elements and that the useful life of the carpet was beyond the ten years as listed. The tenants stated that they had the home and carpets professionally cleaned using the company requested by the landlord.

The tenants stated that the home was clean and free of odor when they moved out. The tenant stated that the landlords chose not to do a move out condition inspection report because the house looked so good. The tenants stated that the blinds were in perfect condition and only required some plastic clips to rehang them. The tenants stated that sofa had normal wear and tear and nothing beyond that. The tenants stated that they did not take the shovel. The tenants stated that the landlords are attempting to replace 10 year old carpet at their expense.

Analysis

I address the tenants' application and my findings as follows.

The tenants said that they are applying for the return of double the security and pet deposits as the landlords have not complied with the s. 38 of the *Residential Tenancy Act*.

Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlords' agent confirmed that the tenants provided their forwarding address in writing on April 28, 2015. The agent also confirmed the tenancy ended on May 31, 2015. The landlord did not file for dispute resolution until June 23, 2015. I find that the landlord is in breach of Sec 38(1) of the Act and must return double the security and pet deposit to the tenants as outlined above. The tenants are entitled to \$5700.00.

The tenants are also entitled to the recovery of the \$100.00 filing fee. The tenants' total award is \$5800.00.

I address the landlords' application and my findings as follows.

1. Carpet replacement and Labour to move furniture.- \$16,951.71.

The landlords stated that due to the tenants' pets, they had to replace the carpet. The landlords stated it was in excellent condition prior to the tenants moving in. The landlords stated that they used a black ultraviolet light to see the numerous pet stains in the carpet. The landlords stated that the home was rebuilt in 2005 and they moved in early 2006. The landlord stated that the home is 3700 square feet. The landlord stated that the carpet layer charged extra to move the furniture around while he was laying the carpet.

The tenants dispute this claim. The tenants stated that the black light shows up all kinds of thing such as petroleum based products, solvents, cleaning agents and wine. The tenants stated that none of these items are visible to the naked eye. The tenants stated that they used the cleaners as requested by the landlord and that the home was fresh and clean at move out, so much so the landlord waived their right to do the move out condition inspection report.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must 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 other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlords did not do a written move out condition inspection report but a “modified walk through”. The landlord did not bring to the tenants’ attention any major concern about the carpet at that time. The landlord rented the unit to a family with small children and pets and ought to have known that there may be a greater likelihood of some stains and pet odors. The tenant abided by the landlords wish and used the carpet cleaning company that he requested. In addition, the landlord has not satisfied me that the tenants were reckless or negligent in anyway.

Even if I have erred in finding no fault on the tenants, I do find that the only documentation before me is the e-mail from the landlords agent stated the home was renovated in 2005. That being the case, Residential Tenancy Policy Guideline 40 would apply and the finding would be the carpets had exceeded their useful life and the landlord would not be entitled to any compensation for them in any event. Based on the above, I dismiss this portion of the landlords’ application.

2. Blind Replacement- \$347.97

The landlords stated that the tenants young child “must have pulled on them” causing damage to the blind. The landlord replaced the blind and provided a receipt for them.

The tenants stated that the blinds were exposed to sunlight for ten years and that the plastic clips became brittle and would be easy to replace. The tenants stated that the blinds themselves were in perfect condition and that it was an easy fix.

I accept that the blinds being ten years old were subject to wear and tear and were the likely cause for the clips to break. The landlords have not satisfied me that the tenants were reckless or negligent. Based on the insufficient evidence before me and on the balance of probabilities, the landlord has not met the requirements of Section 67 as listed above and I must dismiss this portion of the landlords’ application.

Once again I will repeat what I stated in claim #1, for the benefit of both parties, even if I have erred in finding no fault on the tenants, I do find that the only documentation before me is the e-mail from the landlords agent stated the home was renovated in 2005. That being the case, Residential Tenancy Policy Guideline 40 would apply and the finding would be the blinds had exceeded their useful life and the landlord would not

be entitled to any compensation for them in any event. Based on the above, I dismiss this portion of the landlords' application.

3. Sofa Replacement - \$616.00

The landlord stated that the tenants' pets caused excessive damage to the sofa that required them to replace it. The landlord's stated that the sofa was purchased in 2008 or 2009. The landlord provided a receipt for the replacement.

The tenants dispute this claim. The tenants stated that the sofa had a few minor scuffs on it but that to be expected for its age and for it being rented to a family with pets. The tenants stated the sofa had pre-existing scuffs.

The landlords did not provide a move in inventory list for this hearing reflecting the condition of the items when the tenants moved in or alternatively, before and after pictures. Based on the insufficient evidence before me I am unable to ascertain changes in condition of the sofa at move in versus move out, if any. Based on the above I must dismiss this portion of the landlords' application.

4. Shovel Replacement - \$33.60.

The landlords stated the tenants took the shovel. The landlords provided a receipt for the replacement.

The tenants dispute this claim. The tenants stated that they did not take the shovel.

The landlord did not provide any evidence that the tenants took the shovel and I therefore dismiss this portion of their application.

5. Loss of Revenue – June, July, August, \$11,100.00.

The landlords stated that they were unable to rent the home for three months due to the carpets. The landlords stated that it was difficult for them to arrange to have them replaced as they lived on Salt Spring Island and were having difficulty finding the time to conduct the repairs. The landlords stated that the unit remained empty for three months before they were able to rent it again.

The tenants dispute this claim.

In the landlords own testimony they acknowledged that due to the great distance between their home, their jobs and the rental property, they were rarely available to conduct the work. The scope of work to re-carpet a home does not require three months to have it completed. In addition, as I have made the finding that the landlord has failed

to show that the tenants were responsible for the damage to the carpets, the landlord is not entitled to the loss of revenue for the three months.

The landlords have not been successful in their application.

The tenants have been successful in their application.

Conclusion

The tenants have established a claim for \$5800.00. I grant the tenants an order under section 67 for the balance due of \$5800.00. This order may be filed in the 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: December 10, 2015

Residential Tenancy Branch

