



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HEATHER J. TILBURT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

LANDLORD: MND, MNSD, FF
TENANT: MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking compensation for damage to the unit, site or property, to retain part of the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenants were done by registered mail on July 24, 2015, in accordance with section 89 of the Act. It should be noted that the Landlords' application was first received by the Residential Tenancy Branch on July 13, 2015 and then a correction to a name was made on July 24, 2015.

Service of the hearing documents by the Tenants to the Landlords were done by registered mail on September 29, 2015, in accordance with section 89 of the Act.

Both parties confirmed they had received the other parties hearing packages.

Issues to be Decided

Landlord:

1. Is there damage to the rental unit and if so how much?
2. Are the Landlords entitled to compensation for damage and if so how much?
3. Are the Landlords entitled to retain the Tenants' deposits?

Tenant:

1. Are the Tenants entitled to the return of double the security deposit?

Background and Evidence

This tenancy started on June 1, 2014 as a one year fixed tenancy and continued on a month to month basis after the expiry date of May 31, 2015 of the fixed term tenancy. Rent was \$950.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$500.00 at the start of the tenancy. A move in condition inspection report was completed on June 2, 2014 and a move out condition inspection report was completed on June 30, 2015. On the move out condition inspection report the Landlords have listed damage to the unit as a result of the tenancy including carpet damage and paint damage. The Tenants have signed the report that they do not agree to the damage as they believe the damage is normal wear and tear.

The Landlords said the Tenants' cat damaged the carpet in the rental unit and they requested the Tenants pay to repair the carpet on the move out condition inspection report. The female Landlord said there was other damage but they are not making a claim for it. The Landlord said the carpet cost \$150.00 to repair and as the Tenants did not agree that it was damage to the rental unit above normal wear and tear they have made an application to retain \$200.00 of the security deposit, \$150.00 for the carpet repair and \$50.00 for the application filing fee. The Landlord said the repairs have been completed and they submitted a copy of the receipt to support their claim and they submitted photographs that show the carpet is scratched down to the mesh base of the carpet. The male Landlord said the carpet was 1 year old and installed professionally.

The Tenants said the damage to the carpet was normal wear and tear which may have resulted from poor quality carpet or poor installation. The female Tenant also said she did not believe the photographs showed the carpet is scratched down to the base mesh of the carpet. The Tenants continued to say they believed that the Landlord had not filed their application within 15 days of the end of tenancy or receiving the Tenants' forwarding address in writing therefore the Tenants filed for double their security deposit in the amount of $2 \times \$500.00 = \$1,000.00$. The discussion and testimony in the hearing revealed that the Landlords had made their application within the 15 day time limit to retain a security deposit and as no amount was indicated on the move out condition inspection report the Landlords were correct to retain the full deposit until the hearing date. The male Tenant said that he understood this now.

The female Tenant said the Landlords should have sent part of the security deposit back to them when the Landlords completed their application.

The female Landlord said she was told by the representative and the RTB to retain the full deposit until the hearing date.

In closing both parties said they were frustrated with this tenancy and how things have turned out. The Tenants said the damage to the carpet is normal wear and tear and the Landlord said the carpet was only one year old and it was installed by a professional carpet installation company. The Landlord said the damage to the carpet was above normal wear and tear.

The Landlords requested to retain \$200.00 of the Tenants' security deposit.

The Tenants requested that their security deposit of \$500.00 be returned to them.

Analysis

Section 32 of the Act says (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Further **Section 37** of the Act says (1) Unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

(2) When a tenant vacates a rental unit, the tenant must

(a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, and

(b) give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property

I have reviewed the evidence and testimony of the Landlords and the Tenants including the condition inspection reports, photographs of the carpet at the end of the tenancy, the carpet repair invoice and the written evidence and verbal testimony provide by the parties. After reviewing the evidence I accept that Landlords evidence that the carpet was scratched down to the base mesh of the carpet and given that the carpet was only 1 year old and installed by a professional carpet company, I find the damage to the carpet is not normal wear and tear but excessive damage caused by the Tenants. Consequently I find the Landlords' have established grounds to retain \$200.00 of the Tenants' security deposit. I order the Landlords to retain \$150.00 of the security deposit for damage and \$50.00 to recover the filing fee. As well I order the Landlords to return the balance of the security deposit of \$300.00 to the Tenants forthwith.

With regard to the Tenants application for the return of double their deposit; I find the Landlords made their application in accordance to the Act so the Tenants have no grounds to support their application. I dismiss the Tenants' application without leave to reapply.

Conclusion

The Tenants' application is dismissed without leave to reapply.

The Landlords are ordered to retain \$200.00 of the Tenant's 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: December 08, 2015

Residential Tenancy Branch

