



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPN, MND, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested a Monetary Order for damage to the rental unit and to recover the filing fee. Although also claimed on the application, the Landlord's representative confirmed that they did not seek an Order of Possession as the tenancy ended in April of 2015.

Both parties appeared at the hearing. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Should the Landlord recover the filing fee?

Background and Evidence

S.I. testified on behalf of the Landlord. She stated that the tenancy began in May 2014 and ended when the Tenants moved out in April of 2015.

Introduced in evidence was a copy of the residential tenancy agreement confirming the monthly rent of \$1,400.00 per month as well as the payment of a \$700.00 security deposit and a \$700.00 pet damage deposit. S.I. testified that she returned the deposits at the end of the tenancy less agreed upon deductions for carpet and blind cleaning.

The Landlord seeks compensation in the amount of \$315.00 for the cost of a second carpet cleaning and replacing some of the carpet underlay as well as \$50.00 for the filing fee. S.I. testified that after the tenancy ended and the carpets were cleaned the smell of pet urine in the second bedroom was evident when the new tenants moved in.. She also stated that the carpet cleaner stated the carpet was soaked in pet urine such that the carpet underlay had to be replaced.

S.I. confirmed that the Tenants had a dog and she stated that the smell of the urine was consistent with the smell of dog urine.

S.I. also stated that when the tenancy began the carpets were cleaned and there was no such smell, or at least she was not informed by the Tenants of such a smell. The Landlord stated that when the carpets were cleaned at the end of the subject tenancy the smell was very noticeable such that she submitted that it had occurred during the tenancy.

C.C. testified on behalf of the Tenants as follows. She stated that they moved out April 23, 2015, did a walk through with the Landlord, and had their security deposit returned less a \$289.00 deduction for carpet cleaning and blind cleaning. She stated that they did not receive an email from the Landlord about the issues with the carpet until June 10, 2015, a month and a half after the tenancy had ended.

C.C. confirmed that they had one dog but claimed the dog never urinated in the house as he was always taken out. She also stated that the dog was confined to the downstairs by a gate, and that he did not go upstairs unless accompanied by the Tenants. She also stated that the upstairs bedroom had a musty smell but it cleared up after the carpets dried. She stated that she was informed by the Landlord that the new renters had a son who had severe allergies, and she suspects that he was more sensitive to the smell than the Tenants were when they first moved in. In all the circumstances she submitted that the Tenants should not be responsible for the cost to replace the underlay or clean the carpet a second time.

In reply, S.I. confirmed that the previous renters who lived in the rental unit prior to the subject tenancy had two dogs.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the 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. In this case, the Landlord has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party 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.

The condition in which a Tenant should leave the rental unit at the end of the tenancy is defined in section 37 as follows:

Leaving the rental unit at the end of a tenancy

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

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 responding party 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.

The Landlord claims the cost of replacing the carpet underlay and cleaning the carpets. The Landlord's representative, S.I., testified that the carpets were cleaned at the beginning of the subject tenancy as well as at the end. She stated that the new renters, and in particular their son who suffered from allergies, noticed an unpleasant smell when the carpets were cleaned and it was determined the underlay in the son's bedroom was soaked in dog urine requiring replacement and further cleaning. She stated that the subject Tenants had a dog and submitted that the dog urine was caused by their dog.

The Tenants deny causing any damage to the rental unit carpet or underlay. C.C., testified on behalf of the Tenants and noted that the Tenants already paid for carpet cleaning (which was taken from their deposit) and participated in a move out condition inspection report at which time no damage was noted. C.C. also confirmed that while they had a dog, the dog was restricted to the lower floor which was not carpeted. She testified that the dog was regularly taken outside, and when it was upstairs, it was accompanied by the Tenants.

Both parties agreed that the renters before the subject tenancy had two dogs.

The Tenant submitted that when their tenancy began the carpet had a musty smell but that this smell went away after the carpets had dried. She further stated that she believed that the new renters' son, being allergic, would have been more sensitive to the smell, which she believed existed at the start of their tenancy as well.

The Landlord bears the burden of proving their loss, and that it occurred due to the actions or neglect of the Tenants in violation of the *Act* or agreement.

The move out condition inspection report makes no mention of the damaged carpet and underlay. The email communication between the parties confirms that neither noticed an unpleasant smell at the time the walk through was completed. As well, the Tenants security deposit was reduced by the amount charged to clean the carpets. In doing so, the Tenants honoured their obligations to clean the carpets pursuant to the *Act*, and the *Residential Tenancy Policy Guidelines*.

It is notable that the alleged damage was not brought to the Tenants' attention until a month and a half after their tenancy ended.

I accept the Tenants' evidence that the upstairs carpets also had an unpleasant smell at the start of their tenancy. I also accept their evidence that their one dog was restricted to the main floor which I am told was not carpeted and that their dog was regularly taken outside.

The parties agreed that the renters before the subject tenancy had two dogs. As such, this rental unit has been occupied by renters with dogs for at least two consecutive tenancies. I was not provided any information as to whether the current occupants also have pets.

In any case, I find it more likely that the staining to the underlay occurred over many years as a result of various dogs being permitted in the rental unit. I agree with the Tenants that the current occupants were likely more sensitive to the smell as a result of their son's allergies.

The Landlord failed to submit any evidence as to the age of the carpet or underlay. It is possible the underlay was in need of replacing due to age alone.

After careful consideration of the evidence before me and the testimony of the parties I am unable to find that the Tenants are responsible for the cost to replace the underlay and re-clean the carpets. Accordingly, I dismiss the Landlord's application for compensation in the amount of \$315.00. As the Landlord has been unsuccessful, I also dismiss their claim for recovery of the filing fee.

Conclusion

The Landlord failed to prove their claim for compensation for the cost of the second carpet cleaning and replacement of the underlay. Their claim 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: June 02, 2016

Residential Tenancy Branch