



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened in response to an application by the landlord for a monetary order for damage to the rental unit, loss of revenue as a result, and to recover the filing fee.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties acknowledged receiving all of the evidence of the other and as provided to this hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties were further provided opportunity to mutually resolve the dispute, to no avail.

The style of cause has been amended to reflect proper spelling of all names.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started on or about July 01, 2015 and ended January 31, 2016. The tenancy also accommodated 3 dogs with the landlord's knowledge and consent along with the requisite pet damage deposit. At the start of the tenancy the parties conducted a *move in* inspection. The parties testified that at the end of the tenancy they mutually conducted a cursory inspection which each of the parties characterized as "rushed", for reasons each party attributed to the other. The landlord later sent the tenant pages 1 and 2 of the condition inspection

report (CIR). It must be noted the CIR does not provide for, nor contains, signatures of the parties. The parties did not agree as to the particulars placed in the CIR in respect to the general cleanliness of the unit. But primarily the landlord claims the 16 year old carpeting in the unit contained multiple pet urine stains attributable to the tenant's 3 dogs and that professional carpet cleaning would be required. The tenant testified they cleaned the carpeting using, "purchased products", and short of using extraction cleaning equipment. The tenant testified that in their opinion the unit and the state of the carpeting were suitable for immediate re-occupation by a new tenant: with which the landlord strongly disagreed. The landlord testified they personally attempted to clean the carpeting, however, on February 23, 2016 the landlord secured Coit Cleaning Services to professionally clean the carpets of the rental unit. The landlord provided the invoice for the carpet cleaning service in the amount of \$279.35. The landlord highlighted the invoice states, *no guarantee remove stain in carpet* – as written. The landlord testified the pet stains remained apparent after cleaning and that it negatively affected their ability to re-rent the unit for March 01, 2016. On March 15, 2016 the landlord obtained a *quotation* for new carpeting in the inclusive amount of \$1900.00 which they claim they subsequently acted upon replacing the carpeting. The landlord entered into a new tenancy agreement thereafter. The landlord confirmed the age of the carpeting to be 16 years, however argued that in their opinion the carpeting would have endured considerably longer if it had not been fatally compromised by the tenant's pets.

The landlord testified they were ill about the time of the tenant vacating and did not focus efforts to professionally cleaning the carpeting until near end of February 2016, and then replacing the carpeting several weeks later well into March 2016.

The tenant testified their 3 dogs were not responsible for the urine markings in the carpet, and if they were that they testified they took steps to clean any urine before leaving the tenancy. The tenant also argued that the age of the carpeting was beyond its useful life. The tenant effectively denied all responsibility for the landlord's claims.

As part of their evidence the landlord provided a series of photographs which they claim depict the condition of the carpeting with the pet urine staining, before and after cleaning. The tenant's testimony is that the landlord's photographs do not appear to be of the carpeting as they recall during the tenancy.

The landlord's application seeks the following costs:

Carpet cleaning	\$279.35
House cleaning	\$150.00
Carpet replacement	\$1900.00
Loss of rental revenue for 2 months	\$5400.00
Filing fee	\$100.00

Analysis

Under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test *on the balance of probabilities*:

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss or damage.

In addition, when a claim is made by the landlord for damage to property, the normal measure of damage is the cost of repairs or replacement (with allowance for such items as depreciation / wear and tear), whichever is less. The onus is on the tenant to show that the expenditure is unreasonable.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The claimant must prove the existence of the damage or 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. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

The landlord relies on their determination the tenant caused the purported damage. The tenant relies on their argument the landlord cannot establish suffering a loss.

On the face of the evidence, I find the landlord's condition inspection report (CIR), incomplete and lacking signatures, does not carry sufficient evidentiary weight to establish the rental unit was left unreasonably clean to support the landlord's claim for house cleaning. As a result, I **dismiss** this portion of the landlord's claim for \$150.00.

However, on the evidence of both parties and on *a balance of probabilities*, I accept that the rental unit, whilst occupied by 3 dogs for a period of 6 months, likely subjected the carpeting to exaggerated wear and tear and pet staining. I accept the landlord's claim that the carpeting was compromised by pet staining requiring professional cleaning, which did not prove successful. I find the landlord's initial attempt to mitigate greater costs and attempt professional carpet cleaning as reasonable. As a result, I grant the landlord their claim for carpet cleaning in the requested amount of **\$279.35**.

In respect to the landlord's claim for carpet replacement it must be noted that **Residential Tenancy Policy Guidelines 37** – lists the useful life for carpeting as 10 years. It must further be noted that the above stipulation is a *guideline* meant to provide a measure in the absence of mitigating evidence. In this matter, I have found that the pet staining likely resulted from the tenant's 3 dogs and likely contributed to the carpets ultimate compromise and unsuitability for a new tenancy. I find it reasonable that in the absence of the above the useful life of the carpeting would likely have endured. As a result, I find it appropriate and reasonable to consider the landlord's expectation of a longer useful life than suggested by the policy guideline. As a result I find that a nominal award of **\$350.00** reasonably represents the landlord's loss as offset for the replacement cost of \$1900.00.

I find it was available to the landlord to determine the suitability of the rental unit, including the carpeting, as soon as possible and attend to any necessary mitigation to avoid losses of rent revenue which they claim was the case for 2 months after the end of the tenancy. I find it was available to the landlord to have acted sooner in their efforts to clean and/or replace the carpeting. As a result, I find the landlord did not take available measures to minimize a loss of rent revenue. The landlord did not follow Section 7(2) of the *Act* by taking reasonable steps to mitigate or minimize the loss they claim. I **dismiss** this portion of the landlord's claim for loss of revenue.

As the landlord has been in part successful in their application they are entitled to recover their filing fee of \$100.00 for a sum award as follows.

Calculation for Monetary Order

Professional carpet cleaning	\$279.35
Carpet replacement – nominal compensation	350.00
Filing Fee for the cost of this application	100.00
Total Monetary Award	\$729.35

I grant the landlord a Monetary Order under Section 67 of the Act for the amount of **\$729.35**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's claim in relevant part has been granted.

This Decision is final and binding on both parties

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: November 02, 2016

Residential Tenancy Branch