Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on August 14, 2016. The Landlord filed seeking a $4,160.77 monetary order for: damage to the unit, site or property; to keep all or part of the security and pet deposits; for money owed or compensation for damage or loss under the *Act,* regulation, or tenancy agreement; and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Agent (the Agent), and the Tenant. The Landlord's Agent was a former co-owner of the rental property and was the Landlord's mother.

Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant confirmed receipt of a copy of the Landlord's application and notice of hearing documents. He stated he received a second package a few weeks prior to the hearing which consisted of the evidence documents and five photographs which were all pictures of carpet and/or underlay. The Tenant argued he did not receive any other photographs.

The Agent testified she was the person who filed the application for Dispute Resolution. She said she was given two sets of documents and she recalled sending those papers to the Tenant; however, she could not recall if the package included copies of the photographs. The Landlord testified that she had sent the five photographs with her evidence to the Tenant via registered mail.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Tenants which states:

1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch (RTB) not less than 14 days before the hearing.

Rule of Procedure 3.17 stipulates that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. In the presence of the Tenant's disputed testimony and in absence of definitive proof to the contrary, I favored the Tenant's submissions that he did not receive photographs displaying anything other than carpets and underlay. Therefore, I find the Landlord's photographic evidence of doors and a screen were not served upon the Tenant in accordance with Rule of Procedure 3.14. As such, I declined to consider that photographic evidence, pursuant to Rule of Procedure 3.17. I did however consider the Landlord's remaining evidence, photographs, and the oral submissions from both parties.

During the course of this proceeding the parties clarified the Tenant had rented the main floor of the house and not the entire house. As such, the style of cause on the front page of this Decision was amended to clarify the rental unit address as being the main floor, pursuant to section 64(3)(c) of the Act.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord proven entitlement to monetary compensation?
2. How are the security and pet deposits to be disbursed?

Background and Evidence

The Tenant entered into a month to month tenancy agreement which began on December 1, 2011 and listed the Landlord and Agent as co-landlords. As per the tenancy agreement rent began at $1,090.00 and was payable on the first of each month. Rent was subsequently increased to $1,115.00 per month. On November 2, 2011 the Tenant paid $545.00 as the security deposit plus $545.00 as the pet deposit.

The rental unit was described as being the main floor of a two level house. The lower level was a self-contained suite which did not form part of the Tenant's tenancy agreement. The house which was built in the early 1960's was purchased by the Landlord and Agent in 1991. The property has always been rented out to tenants since

being purchased by the Landlord and Agent. Sometime after entering into the tenancy agreement with the Tenant, the Agent was no longer a co-owner of the rental property.

A move in condition inspection report form was completed and signed by both parties on December 1, 2011. During the course of the tenancy the Landlords conducted regular inspections which were documented in writing and signed by the Tenant, as supported by the "Inspection Record" submitted into evidence.

The Tenant provided notice to end the tenancy effective July 31, 2016. A move out condition inspection was completed July 31, 2016. The Tenant signed the report indicating he did not agree to deductions from his security deposit. The Tenant provided the Landlord his forwarding address on July 31, 2016 when it was recorded on the move out condition report form.

The Landlord now seeks $4,160.77 which is comprised of the following:

1) $3,132.62 for carpet replacement. The amount claimed is based on an estimate dated 30-Jul-16. The Landlord testified the carpet, which had been installed in approximately 2005, had to be replaced due to damage resulting from dog urine and holes left in the carpet. The Landlord submitted that there was different carpet in the 3rd bedroom as it was installed a few months after the other carpet in the rest of the suite. The carpet has since been removed and replaced with laminate flooring. The Landlord was not able to provide testimony as to when that flooring had been installed or at what cost.
2) $572.50 for half a month's lost rent. The Landlord asserted the damage could not be remediated before the first of the month; therefore they advertised the unit for the 15th of the month so repairs could be completed. The Landlord was not able to testify as to the date the repairs were conducted. She asserted the rental unit was re-rented effective August 15, 2016.
3) $455.65 for other repairs to the unit as per the statement submitted into evidence from the contractor who conducted the repairs. Those repairs included supplies and labour to: remove the carpet and underlay; paint and seal the floor; repair the screen door; replace the recycle boxes; patch and paint the damaged doors and trim; and replace the damaged blinds.

In support of the application the Landlord submitted documentary evidence which included, in part, copies of:

- a witness statement dated September 30, 2016 indicating the witness worked for a flooring company and subcontracted his services to the Landlord's handyman services company;
- photographs from the underside of the carpet and underlay which display patches of wet spots that had penetrated the carpet and alleged to have penetrated the underlay;
- a typed invoice dated August 14, 2016 issued by the Landlord and her spouse's handyman services company listing amounts charged for work performed;

- a quote from a carpet store dated 30-Jul-16 indicating “site measure was done Aug 9” for the amount of $3,132.62.

The Tenant disputed all items claimed by the Landlord. The Tenant noted that the damage claimed to the doors, trim, and screen door were not listed on the move out inspection report. The Tenant questioned the validity of the contractor invoice submitted by the Landlord and asserted that invoice was created by the Landlord and her husband as the husband did the repairs.

The Tenant argued that the Landlord’s evidence was not believable as the damages being claimed were not listed on the move out condition report. He asserted the rental unit had been occupied by numerous tenants before him, all of whom had pets. He said those urine stains could have been caused by any one of the former tenant’s pets since 2005.

The Tenant testified his dogs were always kenneled during his absences and were not left alone for long periods of time. In addition, the Tenant argued his dogs slept in their kennels in the master bedroom in which he had his bed; dressers; and two wardrobes, so there was not enough open carpet space for the dogs to urinate on. He asserted that his arguments were evidence that his dogs could not cause the stains displayed in the Landlord’s photographs. In addition the Tenant questioned why the annual inspections did not record the urine smell or the damage to the carpets

Upon review of the carpet quote submitted by the Landlord the Tenant argued it would not cost $3,132.62 to have carpet installed in an 800 square foot area and noted it was a rental unit not a high end unit. He then questioned if the price listed was accurate.

The Tenant argued that he did not agree to the condition inspection report form because during the move out inspection the Agent all of a sudden started going from room to room saying she could smell something until she said the entire house smelled.

The Landlords argued the blue box program only came into effect three years ago; two years after this tenancy started; at which time each house was provided two blue boxes from the municipality. The Landlord noted that the previous program used bags not boxes.

The Landlord pointed to the condition inspection report form which indicates there was no smells at move in. She asserted that during the last couple of months of the tenancy the Tenant was staying with his girlfriend and had his daughter stay at the rental unit with his dogs.

The “Inspection Record” submitted into evidence indicated the inspections of the unit were conducted between December 1, 2013 and December 5, 2015 during which the comments stated “no problems” or the following issues were noted: (1) a broken blind in

the middle bedroom was noted on December 1, 2013; and “carpet damage – many pulled fibres” were noted on September 1, 2015 and December 5, 2015.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Relevant Sections of the *Act,* Regulation, or Policy Guidelines:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 21 of the Regulations provides, in part, that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part, if mutually agreed upon or is undisputed, is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection.

The Landlord bears the burden to prove: the damages being claimed were caused by the Tenant in breach of the *Act;* the actual value of the loss; and that the Landlord complied with section 7 of the *Act,* pursuant to Policy Guideline 16.

Awards for damages are intended to be restorative, meaning the award should place the applicant in the same financial position had the damage not occurred. Where an item has a limited useful life, it is necessary to reduce the replacement cost by the depreciation of the original item. In order to estimate depreciation of the replaced item, I have referred to the normal useful life of items as provided in *Residential Tenancy Policy Guideline 40.* Although an item may be of an age where it has no depreciated value, the depreciated value does not, in and of itself, indicate that item would

automatically be considered to be of no use. Rather, it should be noted that many items, if well cared for, may still be considered usable.

Residential Tenancy Policy Guideline 16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear.

Regarding the claim for carpet

I gave minimal evidentiary weight to the Landlord's witness statement which spoke to the condition of the carpet at the time it was removed. Minimal weight was attributed for the following reasons: the witness did not attend the hearing; therefore, the witness did not give testimony and did not avail themselves to be cross examined. The Tenant had the right to hear and confront any evidence against him first hand and was not provided that right with respect to the witness statement. Furthermore, the witness is an employee/contractor for the Landlord and his employment might be influenced if he did not submit evidence which favored the Landlord.

Secondly, I find the Landlord provided insufficient evidence to prove the actual age of the carpet involved in this dispute. I made this finding in part, after consideration of the Landlord's testimony that the carpet was installed in 2005. In the absence of a receipt to prove the carpet was purchased new in 2005, I relied upon the Landlord's photographic evidence. I found those photographs displayed carpet of a style and design that would suggest the carpet which was removed from the rental unit was not of the 2005 era, given my experience in dealing with disputes relating to carpets. Rather, the carpets displayed in these photographs were of a style and design which suggests that carpet far exceeded 10 years of age, which is the normal useful life of carpets, pursuant Policy Guideline 40. Even if it was new in 2005 it would have exceeded 10 years of age.

I find it presumptuously suspicious that the carpet estimate was dated July 30, 2016, the day before the final inspection which is when the Landlord first identified or informed the Tenant of the alleged urine smells. That July 30, 2016 quote also stated a site measure had been done on August 9th, 10 days after the estimate was issued.

Furthermore, I accepted the undisputed evidence of the Landlord's "Inspection Record" upon which the Tenant signed agreeing that there was a broken blind in the middle bedroom on December 1, 2013; and "carpet damage – many pulled fibres" which were noted on September 1, 2015 and December 5, 2015. In addition, I accepted the Tenant's submissions that there were no indications of pet urine smells in the carpet noted in those previous inspections.

Although there was insufficient evidence to prove the actual age of the carpet, I find there was sufficient undisputed evidence to prove there was some form of damage caused to the carpet during this tenancy, specifically the pulled fibres, which was not repaired by the Tenant, in breach of section 37 of the *Act.*

After consideration of the above, and in the presence of the Tenant's disputed verbal testimony, I find there was sufficient evidence to prove there was a breach of the *Act* which resulted in a minimal loss to the Landlord. As such, I award the Landlord nominal damages comprised of 2 hours of labour at $50.00 per hour for the removal of the carpet. The Landlord was not awarded compensation for the actual cost of the carpet or underlay for the following reasons. The evidence was the carpet and underlay was not replaced with carpet and underlay; they were replaced with laminate flooring. The depreciated value of the carpet and underlay was found to have exceeded its normal useful life. As such the Landlord is granted a nominal award in the amount of **$100.00**, pursuant to section 67 of the *Act.*

Regarding the claim for loss of rent

From their own submissions, despite having thirty days' notice the tenancy would be ending, the Landlord testified they advertised the unit for occupancy effective August 15, 2016. The Landlord made no attempt to advertise the rental unit for occupancy for August 1, 2016 and argued they knew they had to replace the carpet and underlay so they advertised the unit for occupancy mid-month. That being said, the Landlord was unable to provide testimony as to the date the carpet and underlay was removed or when the laminate was installed.

In regards to the invoice issued by the company owned by the Landlord and her spouse, I give that invoice minimal evidentiary weight as it is simply a typed statement that was not supported by actual invoices to prove the actual cost of the materials purchased by the Landlord and/or her spouse. The *Act* does not provide a Landlord the ability to claim inflated prices for materials. In the presence of the Tenant's disputed testimony I find the Landlord provided insufficient evidence to support the amounts noted on that invoice. In addition, I do not find it a mere coincidence that that invoice was dated August 14, 2016, the day before the Landlord advertised the unit to be available.

After consideration of the totality of the evidence before me, I find the Landlord submitted insufficient evidence to prove they did what was reasonable to mitigate a loss of rent for the period of August 1 to August 14, 2016. While I appreciate there may be circumstances when a tenant cannot occupy a rental unit during extensive renovations, there was insufficient evidence before me that would suggest this unit had to be completely vacant during the flooring installation. Rather, in absence of evidence to prove the contrary, I conclude the Landlord made a personal choice to upgrade the flooring and do minor repairs while the unit was vacant; rather than working around a tenant and their possessions. A Tenant is not required to bear the burden of such a

personal choice. As such, I find the claim for loss of rent does not meet the requirements of section 7 of the *Act,* and it is dismissed, without leave to reapply.

Regarding the claim of $455.65 for the handyman services

As stated above, I have given the handyman invoice minimal evidentiary weight for the reasons listed above. The remaining items listed on the handyman services invoice, excluding the request for paint to “seal urine odour” and costs to replace a bedroom blind, relate to renovations or repairs which are not identified on the move out condition inspection report form or any previous inspection report forms.

In absence of proof of the actual age of the carpet, and in consideration that the unit had been occupied by tenants with pets prior to this tenancy, I find the Landlord provided insufficient evidence to prove this Tenant was responsible for the costs to seal the floor to remediate the rental unit of odours.

Furthermore, in absence of an actual cash register receipt or receipt from the municipality, I am not satisfied the Landlord provided sufficient evidence to prove they purchased replacement recycle boxes.

I accept there was undisputed evidence that a bedroom blind had been broken during the tenancy, as noted on the December 2013 inspection report. That blind was not repaired or replaced by the Tenant in breach of section 37 of the *Act.* That being said, there was insufficient evidence before me to prove the value of that blind, such whether it was plastic, metal, or cloth. Furthermore, there was insufficient evidence to prove the existing blind had been replaced with a blind of the same value and/or material. Accordingly, I grant the Landlord a nominal award comprised of $25.00 for a window blind plus $15.00 labour for a total amount of **$40.00***,* pursuant to section 67 of the *Act.* All remaining items claimed that were listed on the handyman invoice are dismissed, without leave to reapply, for the reasons listed above.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord was partially successful with their application, therefore, I award recovery of the **$100.00** filing fee, pursuant to section 72(1) of the Act.

This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant’s security deposit plus interest as follows:

The Residential Tenancy Branch interest calculator provides that no interest has accrued on the $545.00 security deposit and $545.00 pet deposit since November 2, 2011.

Carpet damage	$ 100.00
Blind replacement	40.00
Filing Fee	100.00
SUBTOTAL	**$ 240.00**
LESS: Pet Deposit $545.00	-545.00
LESS: Security Deposit $545.00	-545.00
Offset amount due to the Tenant	**$ (850.00)**

The Landlord is hereby ordered to pay the Tenant the offset amount of **$850.00**, forthwith.

In the event the Landlord does not comply with the above Order, the Tenant has been issued a Monetary Order for the balance of his deposits **$850.00.** This Order must be served upon the Landlord and may be enforced through Small Claims Court.

Conclusion

The Landlord was awarded $240.00 which was offset against the Tenant's security deposit and pet deposit; leaving a balance owed to the Tenant in the amount of $850.00.

This decision is final, legally binding, and 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 16, 2016

Residential Tenancy Branch