Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlords had named two respondent tenants in filing this Application. Only one of the tenants appeared at the hearing. I heard from the landlord that the second named tenant had not been served with the landlord's hearing package. Since co-tenants are jointly and severally liable for any debts that result from the tenancy, a landlord may pursue one or all of the tenants; however, each tenant that is pursued is entitled to be served with notification of the claims against them and the hearing. Since the second named tenant was not served with the hearing package, I excluded the second named tenant as a party to this proceeding. Accordingly, the decision and Monetary Order that accompanies this decision name only the tenant that was served and appeared at the hearing.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation for damage to the rental unit in the amounts claimed?
2. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The one year fixed term tenancy started May 31, 2015 and ended May 31, 2016. The landlords collected a security deposit of $1,200.00 and the tenants were required to pay rent of $2,400.00 on the first day of every month.

The parties participated in a move-in inspection together and a move-in inspection report was prepared. Both parties were in agreement that at the time of the move-in inspection the report erroneously reflected that the tenant had signed over the security deposit to the landlord. Both parties were in agreement that the tenant did not sign over the security deposit to the landlord at the start of the tenancy, at the end of the tenancy, or at any other time. The parties participated in the move-out inspection together and the tenant indicated on the report that she agreed with the landlord's assessment of the property. I heard that the tenant had been agreeable to paying for carpet cleaning but there was no specific amount authorized to be deducted from the security deposit in writing. Accordingly, I considered the security deposit to remain in trust for the tenant, pending the outcome of this proceeding.

It was undisputed that during the tenancy the carpeting in many areas of the house has been stained by dog urine and/or feces, especially in the basement and on the stair landing. The hall carpeting was also stained with laundry detergent and what appears to be a beverage stain in one of the bedrooms.

The landlord had the carpets professionally cleaned on June 1, 2016 and I heard that the carpet cleaners spent four hours trying to clean and remove the stains. The carpet cleaning company made arrangements to return to the property the following day for further stain treatments; however, the following day the pet odour remained strong, the stains remained very visible, and it was determined that the stains were permanent.

The landlord investigated options for replacing the worst stained areas, such as the basement and stair landing, as the underlay had to be removed. The landlord learned that an exact match of the carpeting could not be obtained. The landlord's options were to wait for a very close match to be shipped on June 15, 2016 or proceed to replace the all of the carpeting with in-stock carpeting. The landlord chose to replace all of the carpeting with in-stock carpeting. The new carpeting was installed on June 17, 2016 after the removal of the old carpeting and underlay and sealing of the sub-floor on the stair landing.

The landlord submitted that new tenants had been slated to move-in June 1, 2016; however, due to the condition of the carpeting the move-in date was re-scheduled to

June 15, 2016 and then changed again to June 30, 2016. The landlord did not collect any rent for the month of June 2016.

The landlords seek to recover the cost of the carpet cleaning of $483.00 and the cost of new carpeting of $3,806.25 from the tenant. The landlord pointed out that the damaged carpeting was new as of November 2012 and that he did not claim for loss of rent for June 2016 against the tenant in an attempt to make a reasonable claim.

The tenant submitted that in April 2016 she talked to the landlord about the condition of the carpeting and that she was aware that she had to take action to remedy the stains. The tenant had booked carpet cleaners but the landlord told her to cancel her cleaners and cleaners of the landlord's choosing would be used. The tenant cancelled her cleaners but the tenant was agreeable to paying the landlord for the carpet cleaners as requested. The landlord responded by stating that carpet cleaning easier to do when the furniture has been moved out but that he did not stand in the way of the tenant doing her own cleaning. However, the landlord was of the belief that if inappropriate cleaning techniques are used the odour can actually be locked into the carpeting, which is why he chose a carpet cleaning company recommended to him by a professional property manager.

The tenant pointed out that the move-out inspection was done before the carpets were cleaned and she was not provided the opportunity to view the carpets after they were cleaned. Had she been involved after the carpets were cleaned the tenant would have the opportunity to view the damage and may have been able to find an alternative solution other than replacement. The landlord responded by stating the tenant did not indicate to him that she wanted to view the property after the carpets were cleaned or otherwise be involved.

The tenant also pointed out that the landlord did not seek estimates or supply of carpeting with any other carpet supply stores and that there may have been better prices or better supply if the landlords had shopped around. The landlord explained that the company he used is the carpet company he and his family have used in the past.

The tenant submitted that the carpeting was closer to five years old at the end of her tenancy and the landlord had two dogs in the unit before she moved in. The landlord acknowledged that he had two pets but submitted that the landlords' pets did not cause damage.

The tenant questioned whether the new tenants were planning on moving in on June 1, 2016 as the landlord had communicated to her that nobody was moving in until July 1,

2016 at the end of May 2016. The landlord offered to supply the tenancy agreement for the new tenants to show the move-in date changed from June 1, to June 15 and then July 1, 2016. The landlord also pointed to the letter written by the new tenants as to the condition of the rental unit when they viewed it again on June 2, 2016. In the letter the new tenant states that they viewed the rental unit on April 23, 2016 and again on June 2, 2016 and that on June 2, 2016 there was the same animal urine odour throughout the home.

Finally, the tenant pointed out that the landlord was aware that there was a dog in the rental unit and the landlord did not charge a pet damage deposit. The landlord acknowledged this to be accurate and explained that he could have charged a pet damage deposit but that he is not required to do so.

Evidence provided for this proceeding included the following, as provided by the landlords: a copy of the tenancy agreement and condition inspection reports; a copy of carpet cleaning receipt and carpet replacement receipt; a copy of a letter written by the new tenant regarding an inspection of the rental unit on June 2, 2016; various text messages exchanged between the parties; and, photographs of the carpeting taken before carpet cleaning and after carpet cleaning was done and of the subfloor that had to be sealed.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under sections 32 and 37 of the Act a tenant is required to leave a rental unit reasonably clean and repair damage caused by way of their actions or neglect. If a tenant fails to meet these obligations the landlord may seek recovery of costs to clean and repair damage. However, sections 32 and 37 both provide that reasonable wear

and tear is not damage and a tenant cannot be held responsible to pay for wear and tear.

Residential Tenancy Policy Guideline 1 provides that a tenant that has an uncaged animal in the rental unit during the tenancy is usually held responsible to shampoo or steam clean the carpeting. The tenant permitted a dog in the rental unit and the landlord paid to have the carpets cleaned shortly after the tenancy ended in an attempt to remove numerous pet stains and other stains in the carpeting. The tenant also indicated she was agreeable to paying for carpet cleaning. Therefore, I grant the landlords' request to recover carpet cleaning costs of $483.00 from the tenant.

As for the carpet damage and the landlords' claims for recovery of carpet replacement costs, I find as follows:

The Residential Tenancy Regulations provide that a condition inspection report is the best evidence as to the condition of a rental unit during a dispute resolution proceeding unless there is a preponderance of evidence to the contrary.

The move-in inspection report indicates the flooring was in good condition at the start of the tenancy and the tenant signed in the space indicating she agreed with the landlord's assessment. I find the tenant did not provide a preponderance of evidence to contradict the move-in inspection report and I give her suggestion that there may have been pre-existing pet damage no further consideration.

The move-out inspection report and the landlord's photographs establish without a doubt that there were numerous pet stains and other stains in the carpeting at the end of the tenancy, and the tenant did not dispute this. Rather, the tenant's position appears to largely focus on the amount of compensation being claimed against her.

I recognize that the carpeting had endured a few years of wear and tear before they were replaced and the tenant is not responsible for that depreciation. I heard the carpeting was new in November 2012 and it was replaced in June 2016, which means it was 3 years and 8 months old at the time of replacement. As provided in Residential Tenancy Policy Guideline 40, carpeting has an average useful life of 10 years, meaning the carpeting was replaced approximately 6 years and 4 months prematurely.

Upon review of the carpet cleaning receipt of June 1, 2016, whereby it is noted that the stains were permanent; the landlord's photographs taken before and after the carpets were cleaned; and, the letter written by the new tenant regarding the viewing of the property on June 2, 2016, I find the landlords have provided sufficient evidence to

satisfy me that the stains were permanent and the unit still had an odour of pet urine despite carpeting cleaning. I find the landlords' decision to remove the carpeting and underlay, and seal the subfloor and then replace the carpeting to be reasonable remedy for the damage caused by the tenant and the dog living in the unit with the tenant. Although the tenant suggested that she may have been able to find an alternative remedy, her suggestion was vague and not sufficiently specific for me to find it reasonably likely. Therefore, I hold the tenant responsible for compensating the landlords for damage to the carpeting.

The tenant's statements that she was not involved in the process after the carpets were cleaned are irrelevant. A landlord is not obligated to consult the tenant or offer the tenant the opportunity to come back to the property after the tenancy has ended.

As for not collecting a pet damage deposit, the Act does not require a landlord to collect a pet damage deposit. The landlord has the option to do so and the Act provides for the maximum amount that may be charged and when it may be charged. Therefore, I find this submission to be irrelevant.

Although the landlord only contacted one carpet supply company, I find there is insufficient evidence from the tenant for me to conclude that the amount paid by the landlords was excessively high or that the landlords could have had carpeting installed significantly sooner by using another company.

As mentioned previously, the tenant took issue with the amount being claimed against her. I have considered the age of the carpeting and the fact the landlords did not seek loss of rent from the tenant in my analysis of the amount claimed, as seen below.

The landlords claimed recovery of 100% replacement cost of the carpeting, which appears excessive at first blush since there is no reduction for wear and tear; however, after considering that the landlords did not claim loss of rent for June 2016 I find the landlords' claim to be reasonable, as suggested by the landlord. A landlord may include loss of rent in a damage claim if the damage results in a loss of rent. In this case, the landlord asserted that there was a loss of rent for June 2016 and I accept that to be accurate considering the carpeting was not installed until June 17, 2016. I find the omission of loss of rent from this claim more than offsets the depreciation of the damaged carpeting. To illustrate: taking into account depreciation, the landlords would have been entitled to recover losses up to $4,810.62 [$3,806.25 / 10 years x 6 years, 4 months of premature replacement = $2,410.62 + $2,400.00 loss of rent = $4,810.62]. Since the landlords limited their claim for carpet damage to $3,806.25 I grant the

landlords' request to recover $3,806.25 in satisfaction of the losses related to the carpet damage.

Since the landlords were successful in this application, I award the landlords recovery of the $100.00 filing fee. I also authorize the landlords to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlords.

In light of all of the above, I provide the landlords with a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Carpet damage	$3,806.25
Carpet cleaning	483.00
Plus: filing fee	100.00
Less: security deposit	(1,200.00)
Monetary Order	$3,189.25

Conclusion

The landlords have been authorized to retain the tenant's security deposit and have been provided a Monetary Order for the balance of $3,189.25 to serve and enforce upon the tenant.

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 13, 2016

Residential Tenancy Branch