



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE PENINSULA PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damages or losses arising out this tenancy pursuant to section 67 of the *Act*;
- an Order to retain the security or pet deposit pursuant to section 38 of the *Act*,
and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing. The landlord was represented at the hearing by agent C.L., while the tenant was represented by her son, K.E. (the "tenant"). Both parties were given a full opportunity to be heard, to present testimony and to make submissions.

The tenant confirmed receipt of the landlord's application for dispute and evidentiary package, while the landlord said she had received no evidence from the tenant. The tenant explained that he had sent a copy of his evidentiary package by way of fax on March 29, 2018 at 9:37 A.M. The landlord confirmed that the fax number provided to the hearing by the tenant was in fact the correct fax number for her office. Pursuant to section 88(h) & 90(b) of the *Act*, the landlord is deemed served with these documents on March 2, 2018, three days after their faxing.

Issue(s) to be Decided

Can the landlord retain the tenant's security deposit?

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

Testimony provided at the hearing by both parties explained that this tenancy began on September 1, 2012 and ended on August 31, 2017. Rent was \$1,588.00 at the end of the tenancy, and a security deposit of \$775.00 paid at the outset of the tenancy continues to be held by the landlord.

The landlord is seeking a monetary award of \$4,082.75 as follows:

Item	Amount
Cleaning	\$180.00
Replacement of Carpet	3,361.04
Tile and Floor cleaning	541.71
Total =	\$4,082.75

The landlord argued that the rental unit had been left in a very poor condition at the conclusion of the tenancy, and that significant cleaning and repair works were required in the unit. The landlord said that despite significant efforts, the carpet could not be cleaned and was eventually replaced.

The tenant acknowledged that due to a communication breakdown between the parties, the carpets had not been cleaned at the conclusion of the tenancy, but questioned whether it was appropriate to replace them. He argued that the carpets were old and somewhat damaged at the start of the tenancy and were replaced with laminate flooring versus carpet. He explained that professional cleaners attended the rental unit on August 28, 2017 to ensure that the rental unit was left in an adequate state for the

landlord, following his mother's departure from the rental unit. A receipt for these services was included in his evidence.

The landlord said that the carpets and tile were new in 2011 and provided various invoices for cleaning and repair, along with photos depicting the state of the carpet following the conclusion of the tenancy. The landlord could not confirm whether the carpet had been replaced with laminate flooring but provided an invoice marked – CARPET— which described the installation of a product listed as “advanced touch.” The tenant said he was basing his assertion that the previous carpet was replaced with laminate on the basis of a real estate listing he submitted as part of his evidentiary package which noted the home contained “all new laminate flooring.” Furthermore, the tenant argued that the cleaning which had been done to the tiles went over and above what was necessary and in fact became renovations versus simple repairs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/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. In this case, the onus is on the landlord to prove entitlement to a monetary award.

I will begin by examining the landlord's application for a monetary award from the first item listed, cleaning, and then will analyze the remainder of the landlord's application as it appears in the table above.

The landlord argued that the rental unit was not used in a “reasonable fashion” and submitted an invoice for five billable hours of cleaning which covered blinds, windows, ledges and floors, for \$180.00. The tenant disputed that this cleaning was necessary, saying that he hired professional cleaners to attend the suite on August 28, 2017. An invoice for these services was provided as part of his evidentiary package. Section 37(2)(a) of the *Act* notes, “when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.” I find insufficient evidence was provided to the hearing by the landlord that the tenant did not leave the rental unit “reasonably clean,” and I find that the statement for cleaning

submitted by the tenant demonstrates that significant efforts were made on the tenant's behalf to ensure that the property was returned to the landlord reasonably clean. For these reasons, I dismiss this portion of the landlord's application.

The second portion of the landlord's application concerns the replacement of carpet which the landlord alleged was left dirty following the tenancy. The tenant acknowledged that the carpet was dirty and did not get cleaned because of a communication breakdown between the parties, and due to mobility issues on his mother's part. He cited its age and condition at the start of the tenancy as reasons contributing to the state in which it was left. Furthermore, the tenant alleged that the landlord did not replace the carpet with a similar product but in fact replaced it with laminate.

A close examination of the invoice submitted to the hearing, reveals that the landlord did in fact replace the carpet in the unit with a similar product. The invoice marked as "sold" and dated September 7, 2017 reveals in the description that the product installed was CAPRET and shows that a "carpet installation" was charged. Based on the invoice submitted by the landlord, I find little reason to doubt that carpet was installed in the unit. The question is therefore whether the replacement of carpet was necessary. I am satisfied based on the evidence presented by the landlord, that efforts to clean the carpet could not return it to an acceptable state for continued use in the premises and that it required replacement. The next question, then, is how much of the replacement cost should the tenant bear.

As mentioned previously, the tenant questioned whether all of the repairs were necessary and explained that some of the damage to the unit should be attributed to regular wear and tear. *Residential Tenancy Policy Guideline #1* expands on this issue of "normal wear and tear" and notes, "The tenant must maintain 'reasonable health, cleanliness and sanitary standards' throughout the rental unit or site. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that started. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guests."

Guideline #1 continues by stating that, "A tenant is not required to make repairs for reasonable wear and tear" which is defined as being the "natural deterioration that occurs due to ageing and other natural forces, where the tenant has used the premises in a reasonable fashion."

When questions of normal wear and tear are raised by a party, *Residential Tenancy Policy Guideline #40* provides direction for determining the useful life of building elements. This guideline notes the following useful life of the following items listed by the landlord:

- Carpet 10 years

The useful life of carpet is 10 years (or 120 months). The landlord said that the carpet was new in 2011 it was therefore 6 years or 72 months into its useful life at the time of the end of the tenancy in August 2017. There remained 4 years, or 48 months of its life expectancy left before the landlord would have had to replace the carpet in the rental unit. Therefore, I find the landlord is entitled to a monetary award equivalent to 40% of the \$3,361.04 being sought. I find the landlord can recover \$1,344.40 for damage to the carpet.

The final portion of the landlord's application concerns an invoice for \$541.71 related to tile and floor cleaning. The tenant provided a copy of the condition inspection report along with an invoice from a cleaning company. A review of both documents reveals that the grout in the bathrooms and eating area was marked as "dirty" but the tiles were marked as "good" and that work was done to replace the associated grout. The tenant argued that he should not be held responsible for the replacement of grout, as this represented a significant improvement to the rental unit.

As noted above, Section 37, "the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." After considering the oral testimony of both parties and examining the condition inspection report, I find that the tenant left the home *reasonably* clean and undamaged, and that the only repairs and cleaning which were required related to reasonable wear and tear. I find that three separate cleaning invoices were submitted as evidence by both parties and that the compensation which the landlord is seeking goes beyond what can reasonably be expected of a tenant when vacating a rental property. For these reasons, I dismiss this portion of the landlord's application.

As the landlord was partially successful in her application, she may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee. The landlord may retain the tenant's security deposit in partial satisfaction for the monetary award.

Conclusion

I issue a Monetary Order of \$569.40 in favour of the landlord as follows:

Item	Amount
Replacement of Carpet	\$1,344.40
Less Security Deposit	(-775.00)
Total =	\$569.40

I issue this Monetary Order in the landlord's favour in the amount of \$569.40 against the tenant. The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: April 19, 2018

Residential Tenancy Branch