



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord required to pay the Tenants double the security deposit?

Background and Evidence

The tenancy started in October 2010 and ended on September 30, 2017. At the outset of the tenancy the Landlord collected \$860.00 as a security deposit. In the last year of the tenancy monthly rent of \$1,980.00 was payable. Although the Parties mutually conducted a walkthrough of the unit at both move-in and move-out no inspection condition report was completed or copied to the Tenants. On October 1, 2017 the Tenants provided their forwarding address to the Landlord.

The Landlord states that regardless of whether or not the Tenants were allowed to have a pet in the unit the Tenants left the carpets and underlay in the living room, hallway and bedrooms damaged by urine and feces odor and that the unit was not thereafter liveable in that condition. The Landlord states that her daughter was supposed to move into the unit after the end of the tenancy however the daughter could not move in with the carpet smells. The Landlord states that after the tenancy ended the carpet and underlay was removed and replaced by laminate and underlay for a greater cost than the estimated cost of the carpet replacement. The Landlord states that around August 2010 the unit was flooded leaving the carpet underlay damaged. The Landlord states that the carpets that were new in August 2009 were not damaged by the flood in 2010 and only required cleaning at that time. The Landlord states that those carpets were placed back over the new underlay in 2010. The Landlord states that at walkthrough there were no smells and that the Landlord has problems with her nose but that later the smell was discovered by the Landlord's daughter and the carpenter that had been brought on to carry out some renovations. The Landlord states that the only renovations planned were paint to the walls and that the carpenter had been invited in to look at the unit.

The Landlord states that the new laminate and under lay flooring costs were around \$2,000.00 for the supplies and \$5,000.00 for the labour. The Landlord states that the Landlord moved into the unit in April 2018. The Landlord claims \$6,313.05 for the removal and disposal of the carpet and underlay and the estimated costs of the carpet replacement.

The Tenants deny that there was any smell in the carpets and that at the move-out walk through the Landlord was accompanied by her daughter and the daughter's husband. The Tenant states that none of them mentioned any smell during the walkthrough. The Tenant states that they were not given any chance to inspect the carpet and that they have no idea what state the underlay was in at the outset. The Tenant states that the carpet was left in the same condition as it was provided. The Tenant denies that the

carpet and underlay was left damaged. The Tenant states that the Landlord had advertised the unit as allowing pets and that the Landlord was informed by the Tenants at the outset of the tenancy that the Tenants were considering getting a pet and the Landlord told them it was not a problem. The Tenants state that the Landlord never told the Tenants that pets were not allowed. It is noted that there is no pet restriction clause in the tenancy agreement. The Tenants states that the Landlord was told as soon as they got a pet and the Landlord never asked for a pet deposit although the Tenants were prepared to pay one if required. The Tenants state that the carpet was cleaned at move-out. The Tenants do not waive the right to return of double the security deposit. The Landlord confirms that her daughter was with the Landlord at the time of the move-out walkthrough and that her daughter does not have any problem with her sense of smell.

Analysis

Section 23 of the Act provides that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day and the landlord must complete a condition inspection report and provide a copy to the tenant in accordance with the regulations. Section 24 of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not make an offer for an inspection at move-in, does not complete a report and does not provide a copy of that report to the tenant. Based on the Landlord's evidence that no move-inspection report was completed and copied to the Tenants I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section,

the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides as follows:

Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

As the Landlord's right to claim against the security deposit was extinguished at move-in and as the Landlord had no claims other than the damage to the unit I find that the Landlord was required to return the security deposit to the Tenants. As the Landlord did not return the security deposit within 15 days receipt of the Tenants' forwarding address I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **\$1,730.00**.

Section 37 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. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Although the Landlord provides photos of the carpet with apparent stains underneath the carpet the Tenant also provides photos of the carpet with no apparent stains on the top of the carpets. Photos are singularly unhelpful to prove odors and stains in themselves do not prove odors. The Landlord's evidence of odors is based on her own evidence that there were no smells at the end of the tenancy and was only noticed later by her daughter. The evidence of the daughter's presence at move-out is not disputed and along with the evidence that the daughter does not have a problem with smells. This evidence of the daughter later noticing a strong smell is contradictory. The Landlord provided no witness evidence from the carpenter. For these reasons and given the Tenants' evidence of having left the carpet clean I find that the Landlord has not on a balance of probabilities substantiated that the carpets and underlay had to be removed due to any act by the Tenants and I therefore dismiss the claim. As the Landlord's claim has not been successful I find that the Landlord is not

entitled to recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,730.00**. If necessary, this order may be filed in the Small Claims 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: May 16, 2018

Residential Tenancy Branch