



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL
 MNDCT, MNSD, FFT

Introduction

This teleconference hearing was scheduled in response to applications by both parties under the *Residential Tenancy Act* (the “Act”). The Landlords applied for monetary compensation for damages, to retain the security deposit towards compensation owing, and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Tenants applied for monetary compensation, for the return of the security deposit and for the recovery of the filing fee paid for the Application for Dispute Resolution.

Both Landlords and both Tenants were present for the duration of the teleconference hearing. Neither party brought up any concerns regarding service of the Notice of Dispute Resolution Proceeding package or the exchange of evidence.

All parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matters

The Tenants applied for the return of their security deposit, as well as for a Monetary Order for damages or compensation and the recovery of the filing fee. However, through the hearing and the evidence submitted by the Tenants, it was evident that they were seeking the return of the security deposit and the recovery of the filing fee paid for

the Application for Dispute Resolution. The Tenants were not seeking any further monetary compensation. As such, this decision will address the Tenants' claims for the return of the security deposit and the filing fee only, along with the claims of the Landlords.

Issues to be Decided

Are the Landlords entitled to monetary compensation for damages?

Should the Landlords be allowed to retain the security deposit towards compensation owing?

Are the Tenants entitled to the return of their security deposit?

Should either party be awarded the recovery of the filing fee paid for their Application for Dispute Resolution?

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on August 1, 2017 and ended on May 31, 2018. Monthly rent was \$1,525.00 and a security deposit of \$762.50 was paid at the outset of the tenancy. The parties agreed that the Landlords are still in possession of the full security deposit amount.

The Landlords testified that the Tenants moved out on May 31, 2018 due to a One Month Notice that was served to them in April 2018. On May 31, 2018, one Landlord and one of the Tenants participated in a move-out inspection and completed the Condition Inspection Report. As the report at move-out was not signed by the Tenants, the Landlords testified that the Tenant refused to sign it. However, the Tenants testified that the Landlord did not ask them to sign the report and they were not aware that they were supposed to.

The Condition Inspection Report at move-in was completed on August 1, 2017. The Condition Inspection Report at move-out notes the following in the master bedroom, "Light red stain on carpet near closet door".

The Landlords have filed claims regarding stains in both bedrooms. They testified that the stains in the second bedroom were not noticed at the time of the move-out

inspection as they believe that the Tenants had vacuumed the carpet in a way that concealed the stains.

The Landlords provided testimony that the red stains mentioned on the Condition Inspection Report are one beige-coloured round stain and several smaller red stains in the same area of the carpet. They were aware of these stains from earlier in the tenancy so knew to look for them at the move-out inspection. Photos of the carpet stains in both bedrooms were provided by the Landlords.

The Tenants testified that they were responsible for the one small beige stain on the carpet in the master bedroom, which they provided photos of. They stated that they were not responsible for the red marks on that carpet, and they were not aware of any stains in the second bedroom.

The Tenants provided testimony that they did not vacuum or arrange the carpet so as to conceal any stains. They testified that any stains present in the second bedroom were not caused by them. They noted that only one carpet stain was listed on the Condition Inspection Report at move-out.

The Landlords have claimed \$126.00 for professional cleaning of the carpet stains. However, they stated that this did not work to remove the stains, which is why they are in the process of repairing and replacing the carpets.

A receipt for \$126.00 for carpet cleaning was submitted into evidence. The receipt, dated June 4, 2018 states that the carpet cleaning company was unable to correct the stains.

The Tenants testified that they cleaned the carpets prior to moving out. They submitted a receipt for the rental of a carpet cleaning machine that they used to clean the carpets. The receipt was dated May 30, 2018 and states a charge of \$31.99 for the machine rental.

The Landlords testified that when the professional carpet cleaning was not able to remove the stains, they spoke to a carpet company about replacement or repair of the stained areas of the carpet. In their original application, the Landlords were asking for compensation for the cost of repairing the carpet in the master bedroom and the full replacement of the carpet in the second bedroom, as a repair was not possible.

However, the Landlords clarified that they were no longer seeking these amounts as they have been able to proceed with the repair and replacement through the carpet warranty. The Landlord testified that the carpets were new in January 2016.

The Landlords are also claiming for compensation in the amount of \$1,525.00 for rent for the month of June 2018. They testified that the Tenants were provided a One Month Notice in April 2018, to end the tenancy on May 31, 2018. The Landlords stated that at this time, they were already aware of the carpet stains in the master bedroom that they would need to fix. As such, they did not attempt to rent the unit for June 2018, but were hoping to deal with the carpet stains, and then rent the unit for June 15, 2018.

However, the Landlords stated that they had multiple professionals come by the home to attempt to clean the carpets, provide quotes, take measurements and schedule time for the repairs. As such, they did not think it was fair to re-rent the unit to a new tenant until the repairs were completed.

When they realized they could proceed with the carpet warranty, this involved more time for the warranty, as well as a minimum four week wait for the repairs to be started. As such, they testified that they were not able to rent the unit for June 15, 2018 and therefore lost a month of rental income.

The Tenants testified that they should not be responsible for the Landlord's decision to not re-rent the unit for June 2018. They stated that they take responsibility for the one small beige stain in the master bedroom, and do not believe that this stain would make the suite unliveable.

The Tenants also stated that they are not responsible for any of the other stains on the carpets and noted that the other stains were not mentioned on the Condition Inspection Report. The Tenants testified that the Landlord completed a walkthrough of the home before they arrived and then walked through the home with them as well, and other stains were not noticed at that time. They submitted that the stains could have been present before their tenancy or caused afterwards.

The Landlord testified that the Tenant was upset during the move-out inspection, which caused some distraction for the inspection and additional stains were not noticed. They also noted that the red stain mentioned on the Condition Inspection Report is in reference to the beige stain on the carpet in the master bedroom, as well as the small red stains on the same carpet.

The Tenants applied for the return of their security deposit. They moved out on May 31, 2018 and provided their forwarding address on the move-out Condition Inspection Report on the same day. They are asking for their full deposit back and testified that they are not in agreement to the Landlord withholding any amount from the security deposit.

The Condition Inspection Report notes that the Tenant agrees to the Landlord withholding the full security deposit. However, both parties confirmed that this information was entered in error at the time of the move-in inspection.

Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

The Landlords stated during the hearing they are no longer claiming for the cost of repairing and replacing the carpet due to the warranty coverage. I accept the testimony of the Landlords that they are no longer seeking compensation for the repair and replacement of the carpets, as this will be covered by warranty. As such, the remaining claim for the stains on the carpets is that of \$126.00 for the professional carpet cleaning.

The parties were not in agreement as to who was responsible for stains on the carpet in the second bedroom and these stains were not noted on the Condition Inspection Report. The Tenants accepted responsibility for one small beige-coloured stain in the master bedroom, but not the smaller red stains in the same area.

I refer to Section 37(2) of the Act which states the following:

- (2) When a tenant vacates a rental unit, the tenant must
 - (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear

I accept the evidence of the Tenants that they rented a steam cleaner for the carpets. However, given that there was at least one stain present on the carpets at the end of the tenancy, I find it reasonable that the Landlords would attempt to have the carpet professionally cleaned before looking at repairing the carpets.

Although the parties were not in agreement as to whether the Tenants were responsible for all of the carpet stains noticed by the Landlord, they did take responsibility for one of the carpet stains. As such, due to the presence of at least one stain, I find the Landlord's decision to have the carpets professionally cleaned reasonable. Therefore, I award the Landlords \$126.00, the amount the Landlords paid for professional carpet cleaning.

The Landlords have also claimed \$1,525.00 for rent for June 2018. In order to determine if compensation is due, the *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* outlines a four-part test as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In the application of the above test, I find that the Landlords did not take reasonable steps to minimize their rental income loss. As they served the Tenants with a One Month Notice in April 2018, to end the tenancy on May 31, 2018, I determine that they had time to advertise and attempt to find new tenants for June 2018.

I also find that the Landlords' decision to not have new tenants in the unit while dealing with the carpet stains is not the responsibility of the Tenants. As such, I find that the Tenants are not responsible for compensating the Landlords for rent for June 2018 as the Landlords did not attempt to minimize their potential loss of rental income.

In order to determine if the Landlords may retain the security deposit towards the compensation owing, I refer to Section 38(1) of the *Act* which states that within 15 days of the later date of when the tenancy ends or the forwarding address is provided in writing, the landlord must return the deposit or file a claim against it.

As the tenancy ended on May 31, 2018, the same day the Tenants' forwarding address was provided in writing, the Landlords had until June 15, 2018 to return the security

deposit or claim against it. As the Landlords applied for Dispute Resolution on June 12, 2018, I find that they applied within the 15 days allowable under the *Act*.

As both parties were partially successful in their applications and both parties paid a filing fee in the amount of \$100.00, I find that the amounts offset each other and therefore, I decline to award the return of the filing fee to either party.

A Monetary Order will be issued to the Tenants for the return of their security deposit, after deductions for carpet cleaning in the amount outlined below:

Return of security deposit	\$762.50
<i>Less carpet cleaning</i>	<i>(\$126.00)</i>
Amount owing to Tenants	\$636.50

Conclusion

Pursuant to Section 67 of the *Act*, I grant the Tenants a **Monetary Order** in the amount of **\$636.50** for the return of their security deposit, after deductions for carpet cleaning. The Tenants are provided with this Order in the above terms and the Landlords must be served with this Order as soon as possible. Should the Landlords 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: September 06, 2018

Residential Tenancy Branch