



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

On January 27, 2018, the Tenants made an Application for Dispute Resolution seeking a Monetary Order for compensation for loss pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenants and the Landlord attended the hearing. All in attendance provided a solemn affirmation.

The Tenants advised that the Notice of Hearing package and evidence was served to the Landlord by registered mail on February 1, 2018 and the Landlord confirmed receipt of this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package and evidence.

The Landlord advised that he served his evidence to the Tenants by registered mail on August 14, 2018 and the Tenants confirmed receipt of this package. As this complies with Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenants were served with the Landlord’s evidence. As such, all evidence was considered when rendering this decision.

At the outset of the hearing, the Landlord advised that he filed his own Application and requested that it be heard as a cross-application to this hearing. However, as the Landlord’s Application did not comply with Rule 2.14 of the Rules of Procedure, I advised the Landlord that his Application would not be heard in conjunction with this

Application and would have to be dealt with separately at the designated time that it was set down for.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

Both parties agreed that the tenancy started on August 1, 2017 and that the tenancy ended on September 30, 2017. Rent was established at \$2,100.00 per month, due on the first of each month. A security deposit of \$1,050.00 was also paid.

Tenants' submissions

The Tenants stated that they participated in a five-minute move-in inspection report on July 31, 2017 where the Landlord "never opened anything" for them. They advised him of some dirty spots; however, he stated that the rental unit had been cleaned professionally previously by three cleaners. When they moved in on August 1, 2018, they noticed a foul odour, a large stain on the carpet and several other smaller stains, and hair and dust as well. They did not notice the stains the previous day as the carpet was wet from being steam cleaned. They submitted that the kitchen cupboards were dirty and they were so disgusted by the cleanliness of the rental unit, they eventually stopped trying to clean it up. After calling the Landlord about these issues, the Landlord advised that there was nothing he could do and that they could move if they wished.

They took pictures of their concerns and sent them to the Landlord. He did not come back to the rental unit to look at their concerns; however, he offered one hour of cleaning, but no carpet cleaning or replacement. They offered to absorb a portion of the cost to replace the carpet and the Landlord stated that he would consider this option.

They advised that the Landlord only asked for measurements to replace the carpet after both parties had signed a mutual agreement to end the tenancy on August 5, 2017.

The cleaner cleaned the apartment for one hour, but this was not sufficient due to the condition of the rental unit. Out of frustration, the Tenants no longer wanted to discuss carpet replacement or further cleaning of the rental unit. The Tenants also discovered that the past tenant had a dog and speculated that the stains and odour were due to this; however, the Landlord provided an aggressive and abusive reaction to this speculation. The Tenants questioned why the Landlord did not visit the rental unit or make any effort when they advised him of the issues.

The Tenants do not believe that the Landlord addressed their concerns and they suspect that either the Landlord did not conduct a move-out inspection with the previous tenant or that he ignored the deficiencies. They stated that the Landlord's suggestion was to move out if they were unhappy. They also stated that the Landlord replaced the carpet after they vacated the rental unit and they questioned why he would do so if it was steam cleaned before their tenancy started and was in good condition.

The Tenants are seeking **\$2,185.00** for "Moving costs & effort" and they provided into evidence a break down of the costs they were seeking. They requested to recoup the move-in and move-out fees, their moving expenses, and the cost of effort associated with finding a new place to live and having to move.

The Tenants are seeking **\$2,185.00** for "Partial use of apt. refund" as they were not able to use the bedroom due to the unsanitary carpet. They stated that as a result, they were forced to live in the den amongst boxes. They approximated that they were only able to use half of the rental unit, so they estimated their loss at half a month's rent for the duration of their tenancy.

The Tenants are seeking **\$500.00** for "Physical/emotional stress" due to the traumatic experience they have endured and due to the manner with which they were treated by the Landlord.

Landlord's submissions

The Landlord stated that a move-in inspection report was conducted with the Tenants on July 31, 2017 where he allowed them to inspect the rental unit. The Tenants signed

the report, agreeing to the documented condition, after twenty minutes. The report indicated that the rental unit was in good condition with the exception of a crack inside the refrigerator. This report was provided to the Tenants on August 1, 2017 and a copy of the report was provided as evidence.

The next day, the Tenants advised the Landlord that the rental unit and carpet were dirty and they provided photographic evidence, but he did not believe the pictures were of the rental unit. He advised that the previous tenant had steam cleaned the carpet and that the Tenants had signed the move-in inspection report; however, the Tenants were still not happy. He offered the services of a cleaner for one hour but the Tenants advised that the rental unit was still not clean and that the carpet was still a problem. The Landlord and Tenants engaged in a discussion about sharing the cost of carpet replacement.

The Landlord acknowledged that there were some stains on the carpet, but not to the extent as the Tenants' pictures indicated. As well, he stated that the Tenants never mentioned that the carpet exuded an unpleasant odour. He speculated that the carpet could have become more stained due to the Tenants when they moved in. He called the Tenants on August 3, 2017 with respect to having a quote for the carpet and he asked for measurements for a quote; however, the Tenants refused to give measurements and they advised that they wanted to move out. A mutual agreement to end the tenancy was signed on August 5, 2017 with an effective end date of September 30, 2017.

On September 30, 2017, a move-out inspection report was conducted with the Tenants and the Tenants signed the report. The report indicated that the carpet was not steam cleaned, that there was an unknown chemical odour detected on the carpet, and that there was damage at the entrance to the bedroom. A copy of the report was provided as evidence. The Landlord advised that he replaced the carpet as the unknown chemical odour could not be removed.

The Landlord submitted a letter from the previous tenant confirming that she had the rental unit professionally cleaned and had the carpet steam cleaned prior to vacating. With respect to the pictures that the Tenants provided regarding the stains on the carpet, the Landlord questioned the authenticity of the pictures and speculated that, based on Tenant M.B.'s profession, he manipulated them to make them look worse.

The Landlord refuted the allegation that he requested that the Tenants move, as his offer of the cleaner for an hour and the negotiation of replacing the carpet is contrary to this notion.

The Landlord suggested that there is no evidence that the Tenants were not able to use the entire rental unit. As such, they should not be compensated as requested.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* requires that the Landlord maintain the rental unit in a state of decoration and repair that complies with health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, make it suitable for occupation by the Tenant.

When trying to establish the condition of the premises at the start of the tenancy and whether or not the Landlord was responsible for any deficiencies in the rental unit, I find it important to review the move-in inspection report. From both parties' testimony, I find it curious when the Tenants stated that the Landlord "never opened anything" and that the Landlord stated that he allowed the Tenants to inspect the rental unit. The purpose of the inspection report is for both parties to examine the rental unit together. However, I find it odd because the testimony of the parties gives the impression that both parties passively stood there and did not adequately inspect the rental unit. The onus is on both parties to conduct this report together and based on the evidence, failing to do so properly is clearly indicative of how the future problems arose after the tenancy commenced. As such, I find both parties at fault here.

While the Tenants submitted that the rental unit was "so overwhelmingly unclean", the undisputed evidence is that they signed the move-in inspection report indicating that there were no deficiencies with the rental unit. If the rental unit was "so overwhelmingly unclean" as they allege, I am skeptical that the Tenants would have signed the move-in inspection report accepting the condition of the rental unit. As such, I find that the move-in inspection report that they signed and agreed to carries more weight than the Tenants' testimony with respect to the cleanliness of the rental unit.

However, with respect to the condition of the carpet, I do find it reasonable that stains may not have been observable at the time of the move-in inspection, as the carpet was wet. While the extent of the stains is in dispute, if the Landlord doubted the authenticity of the Tenants' pictures and suggested that the Tenants manipulated the images of the carpet, I find it curious that the Landlord would not have visited the rental unit himself to confirm the condition of the carpet. Regardless, the undisputed evidence before me is that the Landlord acknowledged that there was an issue with the carpet, otherwise he would not have agreed to consider replacing it for the Tenants. Therefore, I am satisfied that the parties are in agreeance that there was an issue with the carpet that required being addressed, pursuant to Section 32 of the *Act*.

Regarding the Tenants' submission that the carpet exuded a "foul odour", they have submitted no evidence to support this, and even the evidence they provided from the cleaner does not mention a smell. As such, I dismiss the assertion of the carpet smelling.

When trying to establish the validity of the Tenant's request for compensation, I find it important to note that Policy Guideline # 16 outlines that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

In reviewing the totality of the evidence before me, the consistent and undisputed evidence is that the parties had already determined that there was an issue with the carpet and they discussed potential remedies, as per the submitted text messages of August 2, 2018. As such, I am satisfied that both parties agreed that there was some issue with the carpet that required the Landlord's attention, pursuant to Section 32 of the *Act*. However, from the Landlord's text on August 3, 2018 stating "Just to let you know that I found a carpet place in burnaby[sic] but too bad you decided to move", I do not find that because a mutual agreement to end the tenancy was signed, that this absolves the Landlord from having to complete the necessary repairs to the rental unit.

Furthermore, even though the Landlord requested the dimensions of the carpet again in an August 11, 2018 text, the undisputed evidence is that he did not take any steps to correct the carpet issue. While he stated that the Tenants would not give him the measurements of the carpet, this should not have precluded him from going to the rental unit to determine the significance of the carpet issue and initiate steps to rectify it. As the Landlord failed to correct this issue during the tenancy, I am satisfied that part one of the four-part test has been met.

As a result of the Landlord failing to comply with the *Act*, I am also satisfied that the Tenants suffered a loss due to this non-compliance, resulting in part two of the four-part test being met.

Based on the Tenants lack of persuasive evidence though, I do not find that they have adequately established that there was a significant odour emanating from the carpet. In addition, I do not find that the Tenants have provided compelling evidence that the stains in the carpet were so significant or how those stains would have prevented them from using the bedroom entirely. As such, I am not satisfied that the Tenants have substantiated the amount or value of the compensation they are seeking. Consequently, I do not find that part three of the four-part test has been fulfilled sufficiently.

Furthermore, as it appears as if the Tenants impeded the Landlord's efforts to correct the issue somewhat by refusing to provide measurements, I am not satisfied that the Tenants acted reasonably and took steps to minimize this loss either. As the Tenants carry some burden of fault here, I find that part four of the four-part test has not been satisfied.

Based on the evidence before me, the Landlord did not comply with his responsibilities under the *Act* and the Tenants suffered a loss as a result of the Landlord's reluctance to rectify this issue. However, I do not find that the Tenants have substantiated that a claim for a monetary award in a value of \$2,185.00 is justified. In addition, it is also clear that the Tenants hindered somewhat the Landlord's efforts to correct the issue. As such, I am satisfied that both parties share some fault for this issue. Therefore, I award the Tenants a nominal amount of compensation that is commensurate with the loss that they have demonstrated through their evidence. When reviewing the totality of the evidence, I am satisfied that the Tenants have substantiated a loss and are entitled to a monetary award in the amount of ten percent of the monthly rent for the duration of their tenancy. Consequently, I grant the Tenants a monetary award in the amount of **\$420.00**

With respect to the Tenants' claims for "Moving cost & effort" and for "Physical/emotional stress", it was explained to the Tenants during the hearing that there is no provision in the *Act* to compensate for these items that they were requesting. As such, I dismiss these portions of the Tenants' claims in their entirety.

As the Tenants were partially successful in their Application, I find that the Tenants are entitled to recover half of the \$100.00 filing fee paid for this Application.

Conclusion

The Tenants are provided with a Monetary Order in the amount of **\$470.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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 26, 2018

Residential Tenancy Branch