



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL –S; MNSD, FFL, FFT

Introduction

This hearing dealt with monetary cross applications. The landlord applied for compensation for damage to the rental unit and authorization to retain the security deposit. The tenants applied for return of their security deposit. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed that the parties had exchanged their respective hearing documents and evidence. I have admitted all of the submissions and evidence for consideration in making this decision.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions.

I noted that the landlord had attempted to amend her monetary claim by increasing it with an evidence submission. Although this is not the proper way to amend a monetary claim, the tenant and tenant's representative indicated they were prepared to respond to the increased claim. As such, I permitted the landlord to amend the claim to the amount requested by way of the evidence submission. However, during the hearing, the landlord decided to withdraw the additional claims and limited her damage claim to one item: damaged carpeting. Accordingly, the remainder of this decision deals with the landlord's one claim for damaged carpeting.

Both parties provided a considerable amount of written submissions and evidence for my consideration, all of which I have considered; however, with a view to brevity in writing this decision, I have only summarized the parties' positions and referred to the most relevant of evidence.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants in the amount claimed for damaged carpeting, as amended?
2. Disposition of the security deposit.

Background and Evidence

The tenancy started on March 1, 2018 although the tenants took possession on March 9, 2018. The tenants paid a security deposit of \$3,750.00 and were required to pay rent of \$7,500.00 month the first day of every month. The tenancy was supposed to be a one-year fixed term; however, it ended early by mutual agreement on October 31, 2018.

The landlord did not prepare a move-in inspection report. Rather, the tenant completed the move-in inspection report and sent it to the landlord.

An agent for the landlord did a move-out inspection with the tenants on November 2, 2018 but an inspection report was not prepared with the tenants. Rather, the landlord prepared a move-out inspection report based on what her agent told her a few days later. The move-out inspection report was sent to the tenants via email.

There was no dispute between the parties that the carpeting in the two bedrooms was stained at the end of the tenancy. Rather, the parties were in dispute as to whether the stains were pre-existing or occurred during the tenancy. According to the landlord there were stains in the carpeting when the tenancy started and there was a flood of water shortly after the tenancy started; however, the landlord paid to have the carpets cleaned twice and the tenants did not indicate to her that any stains remained after the carpets were cleaned.

The tenants acknowledged the landlord had the carpets cleaned during their tenancy but testified the stains that were there at the start of the tenancy remained despite the carpet cleaning. The tenants provided photographs of the carpet stains and flooding, including photographs after the carpets had been cleaned.

The landlord submitted that the tenants are responsible for pet urine stains even though they were not permitted to have a pet they permitted a dog in the rental unit. The landlord pointed out that the urine stains are not the same stains that were there at the start of the tenancy as the location of the stains is different. The landlord submitted that

the urine stains also left a lingering pungent smell that could not be removed despite the landlord's two cleaning attempts after the tenancy ended. The landlord submitted that there have never been pets in the unit before.

The tenants acknowledged that they did permit a guest to bring her dog into the rental unit but maintained the carpets were damaged by pre-existing stains and wear and tear.

The parties were also in dispute over the landlord's request to have the tenants pay for new carpeting when the carpeting provided to them was a number of years old and had pre-existing stains and water damage. The landlord acknowledged the carpeting was 5 to 6 years old and that there had been tenants occupying the unit before but that there had not been pets before.

When the landlord initially filed her Application on November 14, 2018 she based claim on an estimate she obtained on November 8, 2018 for carpet replacement for "Like, Kind and Quality Carpet Material to your existing carpet" in the sum amount of \$3,153.40 including materials and labour. When the landlord amended her claim in February 2019 the landlord presented an invoice for new carpet and under pad in the amount of \$4,918.17, plus \$829.43 to remove and install the carpeting in December 2018. The landlord claimed that the carpeting she had installed in December 2018 was of similar quality and like to the carpeting removed although the invoice makes no reference to the likeness to the exiting carpet. The landlord did not explain why she did not have the contractor who provided her with a lower quote perform the installation of new carpeting.

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.

Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

In this case, it is undisputed that the carpets were stained at the end of the tenancy. It was also undisputed that the carpeting had stains at the start of the tenancy and the landlord had the carpets cleaned early in the tenancy. Accordingly, it is before me to determine whether the stains that were present at the end of the tenancy were pre-existing or caused during the tenancy, or a combination of both.

Upon review of the landlord's photographs, I find the staining appears consistent with pet urine stains given the size and colour of the stains and the fact that the stains are grouped together in a similar area. The carpet cleaner who attended the unit after the tenancy ended also described the stains as being pet urine stains; the building's concierge wrote that a dog was seen coming and going from the property with the tenant's girlfriend many times a day throughout the tenancy; and, it was undisputed by the tenants permitted a dog in the rental unit. While there is no question there were stains at the start of the tenancy, I note that the location of the stains at the start and end of the tenancy are different. For instance, the tenant's photographs of pre-existing stains appear to be in the middle of the room and near the bathroom whereas the landlord's photographs of yellow stains are near the window. Therefore, on a balance of probabilities, I accept that the tenants are responsible for allowing pet urine stain the carpeting in the bedrooms of the rental unit.

I do accept the tenant's position that the pre-existing stains were not removed with carpet cleaning as their photographs demonstrate that and, as experienced by the landlord, at the end of the tenancy hard to remove stains do not necessarily come out just because the carpet cleaner returns a second time.

In light of the above, I find on a balance of probabilities that at the end of the tenancy the carpets were stained by pet urine and pre-existing stains, and I also accept that urine stains which may leave a smell as purported by the landlord.

Having found the tenants responsible for pet urine staining in the carpets, I turn my analysis to determining the amount of compensation claimed by the landlord.

Residential Tenancy Policy Guideline 40 provides that carpeting has an average useful life of 10 years. Considering the carpeting was six years old, and suffering years of wear and tear from multiple previous tenancies, and the existence of pre-existing stains, I find the landlord's request to recover the cost to install new carpeting from the tenants to be very unreasonable.

I also have significant concerns that the landlord ended up installing carpeting that was better than the carpeting that was in the unit considering the quote she received in November 2018 was for similar carpeting to the existing carpeting and that quote was for only \$3,153.40. Therefore, in estimating the tenants' liability for damaging the carpet with pet urine, I have used the amount quoted of \$3,153.40.

In recognition that the tenant's actions or neglect resulted in additional stains of pet urine to an already worn and stained carpet, I find it appropriate to estimate the tenant's liability as follows:

Carpet replacement quotation for similar carpet	\$3,153.40
Less: depreciation due to age and wear and tear – 60%	<u>(1,892.04)</u>
Remaining value of carpeting	\$1,261.36
Tenant's contribution to staining – estimated at 50%	<u>\$ 630.68</u>

I authorize the landlord to deduct \$630.68 from the tenants' security deposit and I order the landlord to return the balance of the tenants' security deposit to them in the amount of \$3,119.32 without delay. I provide the tenants with a Monetary Order in the amount of \$3,119.32 to ensure payment is made.

I make no award for recovery of the filing fees paid by either party as I am of the view that both parties' contributed to this dispute.

Conclusion

The landlord is authorized to deduct \$630.68 from the tenants' security deposit in satisfaction of damage caused to the rental unit. The landlord is ordered to return balance of the tenant's security deposit in the amount of \$3,119.32 without delay. The

tenants are provided a Monetary Order in the amount of \$3,119.32 to serve and enforce upon the landlord if necessary.

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: March 28, 2019

Residential Tenancy Branch