



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order damages to the unit, for an order to retain the security deposit and pet deposit (the “Deposits”) in partial satisfaction of the claim and to recover the filing fee from the tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

This matter commenced on January 4, 2019, and was adjourned due to evidence issues. The interim decision should be read in conjunction with this decision.

This matter was reconvened on February 12, 2019, and was adjourned due to the landlords witness being unavailable due to an unexpected surgery on a child, who had to be cared for. The interim decision should be read in conjunction with this decision.

Issues to be Decided

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the Deposits in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on February 2018. Rent in the amount of \$2,500.00 was payable on the first of each month. The tenants paid a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00. The tenancy ended on August 17, 2019.

The parties agreed no move-in and no move-out condition inspection report were completed.

The landlords claim as follows:

| | | |
|----|---|-------------------|
| a. | Carpets replacement (75% value) | \$2,601.00 |
| b. | Carpets installation(75% value) | \$ 862.50 |
| c. | Carpets removal and damages (75% value) | \$2,400.00 |
| d. | Filing fee | \$ 100.00 |
| | Total claimed | \$5,863.50 |

The landlord testified that at the start of the tenancy that the carpets were at least 11 1/2 years old, the exact age was unknown. The landlord stated that the carpets had minor stains and there was one wrinkle in the carpet at the start of the tenancy. The landlord stated that during the tenancy the tenants allowed their pet to urinate and defecate all over the house. The landlord stated that as a result the carpets and underlay had to be replaced. Filed in evidence are the before and after pictures of the carpet.

The landlord's witness KB testified that prior to the tenants moving into the property they had attended the property to do maintenance, such as yard work, and power washing the deck. The witness stated that they were also asked by the landlord to check the inside of the rental premise to determine if any work was required. KB stated that the premise was in good shape at that time.

The landlord's witness KB testified that at the end of tenancy they were asked by the landlords to attend the premises. KB stated when they attended that there was an overwhelming smell of pet urine and the carpets were heavily stained and saturated by urine. KB stated that the carpets were not in the same condition as they were when they inspected the premise prior to the tenants moving in.

The landlord's witness KB testified that they removed and disposed the damaged carpets, and underlay, decontaminated the entire floor under the carpets, washed urine off walls and washed and repaired baseboards. KB stated that they have written a detailed list containing 17 items of the work they performed. Filed in evidence is a copy of the details of work.

The tenants testified that their pet would have an occasional accident on the carpet. The tenants stated that they would clean the carpet with their deep clean carpet machine; however, when they did it would bring previous stains to the surface of the carpet.

The tenants testified that they deny these stains were caused by their pet. The tenant stated that the previous tenant had two larger pets.

The tenants testified that they had spoken to the landlord's son as he was looking to have the carpets replaced as the carpets were old. The tenants stated that the landlord has done no work for 12 to 14 years on the rental unit. The tenants stated that the landlord was planning to sell the property. The tenants stated they are not responsible for the replacement of the carpet as they are over 10 years old or any other work that the landlord did to the premises was normal maintenance and was to benefit the sale of the property.

The tenants testified that when they left the premises it was 11pm and the landlord told them at the move out that things were okay that they had done enough.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

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

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, I have reviewed the before and after pictures of the carpet. The after photographs show that there was a large amount of staining on the carpets, which are not depicted in the before pictures.

Even, if I accept the tenants evidence that when they would clean the carpets that previous staining would come to the surface, I find it was their responsibility to stop the cleaning process and notify the landlord.

I accept the tenants caused some damage to the carpets, by their pet, urinating and defecating on the carpet. However, in this case, the carpets had exceeded their useful lifespan.

The Residential Tenancy Policy Guideline 40 defines the useful life of building elements. If the tenants damaged an item, the age of the item may be considered when calculating the tenants' responsibility for the cost of replacement.

I have determined based on the guideline that the carpets had a useful life span of ten years. The carpet was at least 11 years old at the time of replacement. I find the

landlords are not entitled to compensation for the replacement of the carpets as the useful lifespan had expired. Therefore, I dismiss this portion of the landlords claim.

Although I have found the tenants are not responsible for the replacement of the carpet, I must consider whether the tenant is responsible for the cost of labour of the installation of the carpet. In this matter the carpets were old and they had obvious signs of stress, such as stretching causing the carpet to wrinkle. Further, the landlords' were selling the property and new carpeting would benefit the landlords.

I find it would be unfair to the tenants and an unjust enrichment to the landlords if the tenants paid for the full cost of installation; However, I find it reasonable that the tenants pay a portion of the cost as I am satisfied that the tenants cause damage by their pet urinating on the carpets and by not stopping the cleaning process when they knew other staining, not caused by them, was coming to the surface. I find it would be reasonable that the tenants pay 25% of the installation cost as their actions contributed to the damaging of the carpets. The actual cost for labour for the installation of the carpet was \$1,150.00. Therefore, I find the landlords are entitled to recover the cost of **\$287.50**.

The landlords are further claiming costs as detailed in the invoice supplied by their witness KB. However, I find the majority of the detailed items are not the responsibly of the tenants, such as painting all primary walls, mudding chips and dings in the walls, power washing exterior sidewalks, yard clean up.

Further, the landlords did not complete a move-in condition inspection report as required by section 23 of the Act. As a result, I cannot determine if the tenant is responsible for any the repairs.

Additionally the value of the labour that would be directly related to any damage caused by the tenants pet is not broken down. I find the landlords have failed to provide sufficient details as to the actual loss. Therefore, I dismiss this portion of the landlords' claim.

I find that the landlords have established a total monetary claim of **\$387.50** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the above amount from the tenants' Deposits in full satisfaction of the claim. I grant the tenants an order under section 67 of the Act for the balance due of their deposits in the amount of **\$2,112.50**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlords are cautioned** that costs of such enforcement are recoverable from the landlords.

Conclusion

The landlords are granted a monetary order and may keep a portion of the Deposits in partial satisfaction of the claim. The tenants are granted a formal order for the balance due of their deposits.

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 08, 2019

Residential Tenancy Branch