



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL -S; FFL

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit and authorization to retain the tenant's 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 were in receipt of the other party's documents and evidence.

Issue(s) to be Decided

1. Have the landlords established an entitlement to the compensation as claimed against the tenant for damage to the rental unit?
2. Are the landlords authorized to make deductions or retain the tenant's security deposit?

Background and Evidence

The tenancy started on July 1, 2016 and the tenant paid a security deposit of \$1,025.00. The tenancy agreement was set for a fixed term of one year and a new tenancy agreement was entered into annually. The rent was set at \$2,100.00 in the last tenancy agreement. The tenancy ended on June 30, 2019.

By way of this application, the landlords submit that the carpets in the master bedroom located on the upper floor and the basement bedroom were damaged during the tenancy and the landlords seek compensation equivalent to the estimated cost to replace the carpeting in those rooms with new carpeting.

The parties were in agreement that the carpeting in the basement bedroom was new at the start of the tenancy and had a few stains from wall paint at the edges of the carpeting at the end of the tenancy, even though it was not observed by the landlord during the move-out inspection. The tenant acknowledged responsibility for having the carpets cleaned or paying for the damage to the basement bedroom carpeting when the landlords brought it her attention but pointed out the landlords did not respond to her. The landlord acknowledged not responding to the tenant, as the landlords felt the tenant was being dismissive. The tenant stated she was not being dismissive but was pointing out that the staining could not have been that bad since it was not seen at the move-out inspection and she had made a number of improvements to the basement if the house for which she was not compensated. The landlords proceeded to have a quotation for replacement carpeting prepared and filed this claim.

The quotation was prepared by a flooring company and provided to a contractor the landlord has used in the past. The landlord explained that he took measurements of the room himself and provided them to the contractor. The quotation is in the amount of \$938.84 for removal and replacement of carpeting and under pad in the basement bedroom. The landlord acknowledged that they have not yet replaced the carpet in the basement bedroom. The landlord explained that they have not yet decided what to do about the flooring in the basement bedroom and they have since re-rented the unit. The landlord stated that they re-rented the unit for more rent than the tenant was paying. The landlords seek compensation of \$938.84 for the basement bedroom carpeting from the tenant.

The parties were in agreement that the carpeting on the upper floor, where the master bedroom and walk-in-closet are located, was stained at the end of the tenancy. The landlord testified that the carpeting on the upper floor was removed and the landlords upgraded to laminate flooring. The landlords obtained a quotation in the same manner used to obtain a quotation for the basement carpeting, by providing the measurements of the room to a contractor. The quotation indicates removal and installation of new carpeting and under pad at a cost of \$1,569.30. The landlords seek to recover that amount from the tenant.

I was provided opposing evidence with respect to the condition of the carpeting on the upper floor at the start of the tenancy.

The landlords provided a move-in inspection report dated July 1, 2016 that indicates the carpeting was in good condition at the start of the tenancy, as denoted by a "G" next to carpeting in the master bedroom.

The landlord testified that the carpeting was approximately 10 years old when the tenancy started and the landlord had the carpeting cleaned sometime in July 2016 or August 2016, before the tenant actually moved in.

When the tenancy started the tenant was out of town and her sister met with the landlord to retrieve the keys for the rental unit. The tenant's sister testified that when she retrieved the keys from the female landlord at the rental unit she was not invited to do a move-in inspection on behalf of the tenant and the landlord did not provide her with any paperwork or a move-in inspection report. The landlord did not refute this testimony.

The move-in inspection report appears to be signed by a landlord and a tenant; however, the parties had a different recollection as to when and how the move-in inspection and report was prepared.

The landlord testified that his wife did the move-in inspection and the move-in inspection report with the tenant in August 2016 and left the report with the tenant for her to initial. Then the tenant returned it to the landlord.

The tenant testified that she moved into the rental unit in September 2016 and the landlord did not do a move-in inspection with her. Rather, the female landlord left her a copy of an inspection report that was largely left blank. The tenant explained that the landlord had made a couple of notations on the report but that there was no "G" next to the individual items. The tenant made a few notations on the report as well and returned it to the landlord. The tenant testified that she did not keep a copy of the inspection report before handing it back to the landlord and the landlord did not provide her with a copy of the report. The tenant testified that the next time she saw the move-in inspection report was when the male landlord brought it to the move-out inspection and then she observed that several "G's" had been added after she had signed it.

The tenant submitted that the move-in inspection report does not accurately reflect the condition of the rental unit, in particular the carpets, at the start of the tenancy. The tenant submitted that the carpets were cleaned by the landlord before she moved in in September 2016 and the carpets were still stained when she moved-in. She had complained to the landlord, via email, that the carpet cleaners did not do a very good

job and that she would be calling the carpet cleaners back to the property. In response, the landlord provided the tenant with the name of the carpet cleaners.

The tenant testified that she telephoned the carpet cleaners but they indicated the carpets would not improve with another cleaning since they were old.

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.

It is important to point out that monetary awards are intended to be restorative. A landlord is expected to repair and maintain a property at reasonable intervals. Where a building element is so damaged it requires replacement, an award will generally take into account depreciation of the original item. I have referred to Residential Tenancy Branch Policy Guideline 40: *Useful Life of Building Elements* to estimate depreciation of the carpeting.

Section 21 of the Residential Tenancy Regulations provide that a condition inspection report prepared in accordance with the regulations is the best evidence of the condition

of the rental unit in a dispute resolution proceeding unless there is preponderance of evidence to the contrary.

Upper floor carpeting

It was undisputed that the carpeting was stained at the end of the tenancy. The tenant was of the position that the carpeting was old and had pre-existing stains when the tenancy started. The landlords largely relied upon their move-in inspection report as evidence of the condition of the carpeting at the start of the tenancy.

Upon hearing from the parties and upon review of the evidence provided to me, I find the move-in inspection report was not prepared in accordance with the regulations and there is evidence to contradict its accuracy, as explained below.

A move-in inspection is to be performed when the tenancy starts and the unit is vacant and conducted by the landlord and the tenant together. I heard this did not happen. The tenant's sister was provided the keys on or about July 1, 2016 yet the landlord did not perform the move-in inspection with her. Rather, it appears the landlords still had access to the property after July 1, 2016 as evidenced by them having the carpets cleaned in July or August 2016. At some point, a couple of months after the tenancy started and the tenant moved in, the tenant and the landlord met and the move-in inspection report is produced at that time but the landlord reflected the inspection date as being July 1, 2016. Despite completing at least some parts of the report I heard the landlord did not give the tenant a copy of it, as required under the Regulations. Therefore, I find the move-in inspection report was not prepared in accordance with the Regulations.

As for the accuracy of the move-in inspection report, the landlord testified that the carpeting was approximately 10 years old at the start of the tenancy and there is evidence that the tenant had complained the carpeting was stained when she moved in. The move-in inspection report was dated July 1, 2016 yet it was not prepared with the tenant or her agent on that date. The landlord acknowledged that the carpeting was cleaned in July or August 2016 which also serves as evidence the carpet was not in "good" condition on July 1, 2016. Therefore, I find it likely that the carpets were not in "good" condition at the start of the tenancy.

Also of consideration is that Policy Guideline 40 provides that carpeting has an average useful life of 10 years. Since the landlord estimated the carpeting was 10 years old at the start of the tenancy and considering the tenancy was three years in duration, the

approximate age of the carpeting was 13 years at the end of the tenancy. As such, I find the carpeting was at the end of its useful life at the end of the tenancy and to hold the tenant responsible for paying to replace the upper carpeting would result in a betterment for the landlords, not a restorative award. Therefore, I find the landlords are not entitled to compensation for replacement of the master bedroom carpeting and the costs they incurred to install new flooring is their burden under their obligation to maintain the property at reasonable intervals.

Basement bedroom carpeting

It was undisputed that the basement bedroom carpeting was new at the start of the tenancy and at the end of the tenancy there were paint stains at the edge of the carpeting. Although the move-out inspection report does not indicate any staining in the basement bedroom, there is sufficient evidence to contradict the accuracy of the report in this part. Therefore, I find the basement bedroom carpeting was stained at the end of the tenancy and the tenant is responsible for the staining.

As for the landlords' claim for compensation, I find the landlords' claim to be overstated. The landlord acknowledged they were able to re-rent the unit, at a higher rental rate, and have not replaced the carpet in the basement bedroom. Also, the quotation includes new under pad and I do not see a reason for replacing the under pad. Nor, did the landlord indicate any attempt to clean the stains. Further, the carpets have deteriorated naturally with three years of wear and tear during the tenancy. Therefore, I find the landlord's claim would amount to a betterment and not a restorative award.

I accept that the paint staining may contribute the need to clean the carpeting or the pre-mature devaluation of the carpeting if the stains are permanent; therefore, I find it appropriate to provide the landlords with a reasonable approximation of the landlords' loss. I award the landlords \$200.00 and I base this award, in part, on the tenant's email to the landlord in an attempt to resolve this dispute and recognizing the dispute was over a "few hundred dollars" which I find more reasonable.

Filing fee, Security Deposit and Monetary Order

I make no award to the landlords for recovery of the filing fee as I am of the view the dispute could have been avoided had the landlords undertaken a reasonable approach to resolving the matter with the tenant by proposing a reasonable deduction from her security deposit after taking into account pre-existing stains and wear and tear over years of use.

In light of all of the above, I authorize the landlords to deduct \$200.00 from the tenant's security deposit and I order the landlords to repay the balance of the security deposit in the amount of \$825.00 to the tenant without delay.

In keeping with Residential Tenancy Policy Guideline 17: *Security Deposit and Set-off*, I provide the tenant with a Monetary Order in the amount of \$825.00 to serve and enforce upon the landlords if necessary.

Conclusion

The landlords are authorized to deduct \$200.00 from the tenant's security deposit. The landlords are ordered to repay the balance of the security deposit in the amount of \$825.00 to the tenant without delay. The tenant is provided a Monetary Order in this amount to ensure payment is made.

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: November 28, 2019

Residential Tenancy Branch