



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on September 10, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit and for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord and the Tenant both attended the hearing. Both parties confirmed receipt of each other's evidence and did not take issue with the service of those documents. I find both parties sufficiently served each other with their evidence for the purposes of this hearing.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that monthly rent was set at \$1,650.00 and was due on the first of the month. The Landlord still holds a security deposit of \$825.00.

The parties agree that the tenancy started in November of 2018, and ended at the end of April 2020. A move-in inspection was completed on November 1, 2018, and a move-out inspection was completed on April 28, 2020. The condition inspection report was provided into evidence.

The Landlord is seeking to recover the costs associated with replacing the carpets in the rental unit. The Landlord explained that the carpets were around 7.5 years old at the end of the tenancy. The Landlord stated that as noted in the move-in inspection report, the carpets were mostly unremarkable, and in decent condition, with only one small wear stain noted near the door. The Landlord pointed to photos taken at the end of the tenancy and the move-out portion of the condition inspection report to demonstrate that there were multiple stains and some burn marks. The Landlord stated that there were several oil stains that would not come out, even with steam cleaning, and there were also several areas where the carpet was melted.

The Landlord provided written statements from carpet installers speaking to the fact that the carpets had limited wear, overall, and had lots of useful life left. The Landlord provided a receipt to show what it cost him to have the carpets replaced, which totalled \$2,454.17.

The Tenant stated that the carpets were in poor shape at the start of the tenancy, and were not as good as the Landlord has suggested. However, the Tenant did not point to any documentary evidence to support this assertion, other than the mark noted in the move-in portion of the condition inspection report. The Tenant stated that the carpet is $\frac{3}{4}$ of the way through its useful life expectancy of 10 years, and it was showing signs of wear at the start of the tenancy. The Tenant does not dispute that she melted the carpet in a couple of spots. The Tenant also acknowledged that she left a few stains. The

Tenant stated she willing to accept some responsibility for the damage but does not feel she should have to pay for the whole carpet replacement.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Based on all of the above, the evidence (inspection report, photos and invoices) and the testimony provided at the hearing, I find as follows:

Condition Inspection Report

Sections 23 and 35 of the Act states that a Landlord and Tenant together must inspect the condition of the rental unit on the day the Tenant is entitled to possession of the rental unit, and at the end of the tenancy before a new tenant begins to occupy the rental unit.

In this case, I note that the parties do not dispute the contents of the condition inspection report. As such I find it provides reliable evidence with respect to the condition of the rental unit at the start and the end of the tenancy. The Landlord has also provided photos taken at the time the Tenant moved out.

With respect to the Landlord's claim for compensation for the carpet replacement, I note that the Tenant does not dispute that she caused significant damage to the carpets. The Tenant acknowledged melting the carpet and causing stains, which would not come out. Regardless of the age of the carpets, I find this damage would be difficult to remedy, without replacement. I find the Tenant is responsible for the damage, and the replacement cost, but the actual amount owing will be reduced to align with approximate residual value, based on its age and condition, as outlined below.

I note the Landlord has provided a receipt for the cost of the carpets, totalling \$2,454.17. The Landlord also provided opinions from the carpet installation company, which speaks to the fact that the carpets were in good shape, aside from the overt damage caused by the Tenant. The Tenant does not agree they were in good shape and opined that they were showing their age, and had pre-existing damage before she moved in. However, she did not provide supporting documentary evidence to support her assertion. When weighing the competing versions of events, I have placed more weight on the opinions of the carpet professionals with respect to the overall condition and wear of the carpets, as I find they provide a more compelling and reliable version. I accept that the carpets were in slightly above average condition based on their age.

That being said, since the carpet was well into its useful life expectancy, I have utilized *Residential Policy Guideline #40 - Useful Life of Building Elements*, to assist with determining what residual value remains, and what is reasonable for compensation amounts. This guideline states as follows:

This guideline is a general guide for determining the useful life of building elements for determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence.

If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement.

In the above policy guideline, the useful life of carpets is listed as 10 years. The useful life expectancy of listed items is intended as a guideline, and is not prescriptive. Carpets of this age would typically be 75% of the way through their typical useful life expectancy at this point, as per the policy guideline, which leaves a residual value of approximately 25%. However, I find there is sufficient evidence to show the carpets were in slightly

better than average condition, considering their age. It appears the carpets likely would have last several more years, had they not been melted and severely stained by the Tenant. Rather than assigning a residual value of 25%, in accordance with the Policy Guideline and based solely on their age, I find a residual value of 35% is more reasonable given the opinions of the carpet professionals. I find the Tenant is responsible for 35% of the replacement cost of the carpet, due to the damage she caused. The Landlord is granted \$858.96 accordingly.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful, I award the \$100.00 he paid. Also, I authorize the Landlord to retain the security deposit of \$825.00 to offset what is owed.

In summary, I grant the monetary order based on the following:

Claim	Amount
Carpet damage	\$858.96
Filing Fee	\$100.00
Less:	
Security Deposit currently held by Landlord	(\$825.00)
TOTAL:	\$133.96

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$133.96**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 11, 2020

Residential Tenancy Branch