



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Proline Management Ltd. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage, pursuant to section 67;
- authorization to retain the tenants' security deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

The tenants and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord served the tenants with the landlord's application for dispute resolution via registered mail. I find that the tenants were served in accordance with section 89 of the *Act*.

Preliminary Issue- Res Judicata

Both parties agree that in a Direct Request Decision dated July 8, 2020, the tenants were awarded double their security deposit, pursuant to section 38 of the *Act*. The file number for the previous proceeding is located on the cover page of this decision.

The agent testified that this file was originally filed in response to the tenants' Direct Request, but due to a problem with the landlord's application, by the time this application was made, the Direct Request Decision was already rendered. The agent testified that given the above circumstances, the landlord's claim to retain the tenants' security deposit should be heard.

The agent testified that the landlord did not file a Review Consideration Application or an Application for Judicial Review for the Direct Request Decision.

I do not have authority under the *Act*, in this hearing, to change a finding made in a previous decision or to overturn a previous decision. The landlord was permitted under the *Act* to file a Review Consideration Application or an Application for Judicial Review which they elected not to do. I find that the landlord's application to retain the tenants' security deposit is *res judicata* and cannot be heard again.

Res judicata prevents a plaintiff from pursuing a claim that already has been decided and also prevents a defendant from raising any new defense to defeat the enforcement of an earlier judgment. It also precludes re-litigation of any issue, regardless of whether the second action is on the same claim as the first one, if that particular issue actually was contested and decided in the first action.

The landlords' application to retain the tenants' security deposit is dismissed without leave to reapply for lack of jurisdiction.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and the agent's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2018 and ended on May 31, 2020. Monthly rent in the amount of \$1,535.00 was payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agree that a joint move in condition inspection report was completed by the parties on December 27, 2017. Both parties agree that they completed a joint move out condition inspection on May 31, 2020. The tenants testified that they were not given an opportunity to review the move out condition inspection report and were not asked to sign it. The agent testified that the above was correct because the landlord was waiting for a quote on the replacement of the bedroom carpet and that both parties agreed to finish the move out condition inspection report when the quote was obtained. The tenants did not dispute the above testimony. The move in and move out condition inspection reports were entered into evidence.

The landlord testified that the tenants damaged the carpet in a bedroom of the subject rental property by attempting to clean an area with bleach. Photographs of same were entered into evidence. The tenants confirmed that one of them used bleach to clean an area of carpet in the bedroom. The tenants testified that the resulting marks constitute reasonable wear and tear.

Both parties agree that at the start of the tenancy there was a stain on the carpet in the closet of the bedroom in question. The tenants submitted that the previous closet carpet stain caused the value of the carpets to depreciate. The move in condition inspection report states that the closet carpet has a stain. The move out condition inspection report states that the carpet by the door is stained.

The agent testified that it will cost \$1,173.54 to replace the carpet in the bedroom. A quote for same was entered into evidence. The agent testified that the carpet was seven years old at the end of the tenancy and that the landlord is seeking compensation from the tenant pursuant to the following calculation:

$\$1,173.54 \text{ (cost of new carpet)} / 10 \text{ year lifespan of carpet} = \117.354 per year

$\$117.354 \text{ (yearly cost)} * 3 \text{ (years of useful life remaining)} = \mathbf{\$352.06}$

The agent testified that the tenants did not clean the subject rental property and in particular, the kitchen, when they moved out. The landlord entered into evidence an email invoice from the cleaner who cleaned the subject rental property, in the amount of \$105.00.

The tenants testified that they left the subject rental property reasonably clean and that the cleaner would have made it extra clean.

The agent testified that the tenants agreed during the move out condition inspection, that a cleaner would be required to clean the subject rental property. The tenants testified that the conversations they had with the landlord are not binding and that they informed the landlord that they would need to see a receipt for the cleaning before agreeing to a security deposit deduction.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

1. a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The tenants testified that the damage to the carpet due to cleaning with bleach, was reasonable wear and tear.

Residential Tenancy Branch Policy Guideline #1 states that reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. I find that attempting to clean a carpet with bleach and the resulting bleach damage is not reasonable wear and tear as the damage would not have occurred but for the tenants' negligent use of bleach.

Policy Guideline #40 states that the useful life for carpets is 10 years (120 months). Therefore, at the time the tenants moved out, there was approximately 36 months of useful life that should have been left for the carpet of this unit. I find that since the bedroom carpet required replacing after only 84 months, the tenants are required to pay according to the following calculations:

$\$1,173.54 \text{ (cost of new carpet)} / 120 \text{ months (useful life of carpet)} = \9.78
(monthly cost)

$\$7.78 \text{ (monthly cost)} * 36 \text{ months (expected useful life of carpet after tenants moved out)} = \352.08

I find that the pre-existing carpet stain in the closet decreased the value of carpet. As the stain was in the closet and not featured prominently in the room, I find that the value of the carpet only decreased by 5%. I therefore find that the landlord is entitled to collect from the tenants, the sum of **\$334.48**, which is $\$352.08 - \17.60 (5% of $\$352.08$).

I accept the agent's testimony on the move out cleanliness of the subject rental property over that of the tenants. Both parties agree that they discussed the tenants paying for a cleaner during the move out condition inspection. While it is clear that the tenants did not authorize the landlord in writing to make a specific deduction from their security deposit for cleaning, I find it highly unlikely that the tenants would be discussing the cost of a cleaner if the property were clean during the move out condition inspection.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I accept the agent's testimony that the subject rental property required cleaning at the end of the tenancy, contrary to section 37(2)(a) of the *Act*. I find that the landlord suffered a loss from the tenant's non-compliance, in the amount of \$105.00. I find this amount to be reasonable and that, pursuant to sections 7 and 67 of the *Act*, the landlord is entitled to recover this amount from the tenants.

As the landlord was successful in this application for dispute resolution, I find that the landlord is entitled to recover the \$100.00 filing fee, from the tenants, pursuant to section 72 of the *Act*.

Conclusion

I issue a Monetary Order to the landlord under the following terms:

Item	Amount
Carpet	\$334.48
Cleaning	\$105.00
Filing Fee	\$100.00
TOTAL	\$539.48

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants 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: October 29, 2020

Residential Tenancy Branch