



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Property Management
Division and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlord under the Residential Tenancy Act (the Act), seeking:

- Compensation for damage caused by the Tenants, their pets or their guests to the rental unit, site, or property; and
- Recovery of the \$100.00 filing fee.

The hearing was convened by telephone conference call and was attended by the Tenants and an agent for the Landlord (the Agent), all of whom provided affirmed testimony. The Tenants acknowledged receipt of the Notice of Dispute Resolution Proceeding, including a copy of the Application and the Notice of Hearing, and raised no concerns regarding service or timelines. As a result, the hearing proceeded as scheduled. As the parties also acknowledged receipt of each other's documentary evidence and neither party raised concerns about service or timelines, I accepted the documentary evidence before me from both parties for consideration. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Although I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Tenants and the Agent, copies of the decision and any orders issued in their favor will be emailed to them at the email addresses provided in the Application.

Preliminary Matters

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the Branch) under Section 9.1(1) of the Act.

Issue(s) to be Decided

Is the Landlord entitled compensation for damage caused by the Tenants, their pets or their guests to the rental unit, site, or property?

Is the Landlord entitled to recovery of the \$100.00 filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that the one year fixed term tenancy commenced on February 1, 2019, and was set to end on January 31, 2020, after which point the tenancy would continue on a month to month basis. Rent was set at \$1,400.00, due on the first day of each month, and included water, garbage and sewer, and the provision of a washer and dryer, a stove, a refrigerator, a dishwasher and carpet in the rental unit. The tenancy agreement states that only a \$700.00 security deposit was to be paid, that no pet deposit was required, and that no pets were permitted in the rental unit. The tenancy agreement was signed by the parties on January 16, 2019, and indicates that an addendum to the tenancy agreement, a copy of which was also submitted for my review and consideration, forms part of the agreement. A signed Form K was also submitted.

At the hearing the parties agreed that the terms of the tenancy agreement were as set out in the tenancy agreement, the addendum, and the Form K, and that the balance of the Tenants' \$700.00 security deposit, less an amount withheld by agreement between the parties for a strata fine, was returned in compliance with the Act. The parties also agreed that move in and move out condition inspections and reports were completed as required, and that copies of the reports were provided to the Tenants in compliance with the Act and regulations.

The parties agreed that the tenancy ended on June 30, 2020, that a move out condition inspection and report were completed on June 29, 2020, and that the Tenants provided their forwarding address on the move out condition inspection report on June 29, 2020.

The Agent stated that when the new occupant moved into the rental unit, the new occupant was concerned about some odours in the rental unit, specifically pet smells. The Agent stated at the hearing that they advised the new occupant that everyone lives differently and that as they reside in the rental unit over time, their odours will replace those of the previous occupants. The Agent stated that further to this conversation, they received an email from the new occupant on August 5, 2020, stating that they had found cat fur on their belongings and had detected cat odour in the rental unit, specifically the bedroom closet. The new occupant purchased a black light at the cost of \$38.08, and confirmed that there was staining on the carpets in the closet, which show under black light, which they believe to be cat urine. The Agent stated that the new occupant sent them copies of photographs from the Tenants' Instagram account, showing that there was a cat in the rental unit, and that a handy man who attended the rental unit also smelled cat urine in and around the bedroom closet.

The Agent stated that the bedroom carpet was subsequently replaced, at a cost of \$943.11, in order to eliminate the cat urine smell and other pet stains and odours, and that they compensated the new occupant \$302.50, which represents 1/5 of the monthly rent, for loss of use and quiet enjoyment for having to deal with the pet odours and carpet replacement. As a result of the above, the Landlord sought \$943.11 for carpet replacement, \$302.50 for the monetary loss they suffered compensating the new occupant for loss of use and loss of quiet enjoyment, recovery of the \$38.08 spent by the new occupant for a black light, and recovery of the \$100.00 filing fee.

When asked, the Agent acknowledged that it was the new occupant, and not the Landlord, who purchased the black light, and that this amount has not been reimbursed to the new occupant by the Landlord. The Landlord submitted the following documentary evidence in support of their Application: a monetary order worksheet, the tenancy agreement, an email and attached photographs from the new occupant to the Landlord on August 5, 2020, photographs showing the Tenants' cat in the rental unit, a receipt for the purchase of the black light by the new occupant, an invoice for replacement of the bedroom carpet and underpadding and disposal of the old carpet and underpadding, an email from the new occupant to the Landlord dated August 22, 2020, regarding their loss of use and quiet enjoyment, a copy of the move in and move out condition inspection reports, and a letter from the Landlord to the Tenants dated August 17, 2020, regarding the carpet replacement.

Although the Tenants acknowledged having an unauthorized cat in the rental unit, they stated that the cat was never in the bedroom and that they had the carpets professionally cleaned prior to the end of the Tenancy. As a result, they argued that the pet hair shown on the shoes of the new occupant in a photograph likely came from the hallway of the building, and not the rental unit, as it is a pet friendly building. The Tenants denied that their cat urinated in the bedroom, as they stated the cat was not permitted access to the bedroom, and stated that in any event, the staining shown under black light in the closet could not have been from the cat, as the closet was packed with so many items that the cat could not have accessed it, even if they had been permitted access to the bedroom, which they were not.

Further to the above, the Tenants stated that black lights illuminate many things, only one of which is pet urine, and that since no black light inspection was done at the start of the tenancy, it is likely these stains pre-existed the start of the tenancy. Finally, the Tenants argued that they fully cleaned the rental unit and there was no mention of pet odour or staining on the move out condition inspection report, and that in any event, they believe the carpet was past its useful life as one of the Tenant's family members previously resided in another unit in the building with the same carpeting, which was original to the building. The Tenants submitted the following documentary evidence in support of their testimony: documentation from several sources about what types of stains show up under black light, several photographs of the rental unit at the end of the tenancy, rent payment documents, a witness statement, a one page written statement authored by the Tenant J.C., and a one page written statement from the Tenant N.C.

Although the Agent did not know the exact age of the carpet, they acknowledged that the building was built in 2008 and that as a result, the carpet may well have been past its useful life. However, the Agent argued that if not for the damage to the carpet caused by the Tenants' unpermitted pet, the carpet would not have needed to be replaced. Both parties agreed that the Tenants are currently owed a credit of \$400.00, which the Landlord wanted to put towards the monetary costs sought, should they be successful.

Analysis

Section 32 the Act states that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access, must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is not required to make repairs for reasonable

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

A copy of the tenancy agreement was provided for my review and consideration and I note that section 18 of the tenancy agreement specifically prohibits pets. However, at the hearing the Tenants acknowledged that they had an unauthorized cat in the rental unit without the knowledge or consent of the Landlord or the Landlord's agents and contrary to section 18 of their tenancy agreement. Although the Tenants and a witness, who stated that they regularly attended the rental unit, denied that the cat had any access to the bedroom during the entire tenancy and argued that the closet was too full in any event to allow access for a cat, I am not satisfied that this is accurate. First, the Tenants did not submit any proof to corroborate their written statements, or that of the witness, with regards to the fullness of the closet, such as photographs or videos. As a result, I am not satisfied that the closet was so full that a cat could not have gained access to it. Second, although the Tenants stated that the cat was never permitted access to the bedroom, they provided no evidence or testimony regarding how they prevented the cat from accessing the bedroom on a daily basis. As a result of the above and based on common sense and ordinary human experience, I find it exceptionally unlikely that the Tenants were able to prevent their cat from ever entering the bedroom at all during the tenancy.

Finally, although I do not find the black light photographs submitted on behalf of the Landlord determinative of pet urine in and of themselves, in conjunction with the written complaints from the new occupant, the Agents testimony that a handyman for the property also noted the smell of cat urine, the lack of any complaints by the Tenants during the tenancy that there were any pet odours or the smell of pet urine in the bedroom, and the lack of any notation on the move in condition inspection report of previous pet damage, I am satisfied on balance of probabilities that the Tenants' pet urinated on the bedroom carpet, resulting in its ultimate removal and replacement by the Landlord.

Although there is no notation of pet damage on the move out condition inspection report, I am satisfied that the nature of the damage caused may not have been immediately apparent at the inspection, as the bedroom carpet had been cleaned by the Tenants prior to the end of the tenancy, and I accept as fact that the damage only became apparent when a new occupant moved into the rental unit and noted the ongoing smell of pets and pet urine in the bedroom, specifically the bedroom closet.

As set out above, I am satisfied that the Tenant's breached section 18 of their tenancy agreement when they brought a cat into the rental unit and that their cat caused damage to the rental unit which was not repaired by the Tenants as required by section 32(3) and 37(2)(a) of the Act. Base on the invoice from the carpet installer, the Agents testimony at the hearing and the email between the new occupant and the Landlord, I am also satisfied that the Landlord suffered a loss of \$1,245.61 as a result: \$943.11 for the removal and replacement of the bedroom carpet, and \$302.50 in compensation to the new occupant for loss of use and quiet enjoyment. Although the Landlord also sought \$38.08 for recovery of the costs incurred by the new occupant to purchase the black light, I dismiss this claim without leave to reapply as I find that this is not rightfully a loss suffered by the Landlord, as the Landlord has not reimbursed the Tenant this amount, nor do I find that the purchase of a black light was necessary.

Despite the above, the Tenants argued that the carpet was likely past its useful life and at the hearing, the Agent acknowledged that this may be the case, as the building was constructed in 2008 and they are unsure if the carpet was ever replaced. Policy Guideline #40 states that the useful life of interior carpet is 10 years. As the Agent acknowledged that the building was constructed in 2008 and could not provide me with any evidence that the carpet had been replaced since the rental unit was constructed and the original carpet was installed, I am therefore satisfied on a balance of probabilities that the carpet in the rental unit at the time of the tenancy was the original carpet from 2008. The invoice from the carpet installer states that the carpet was installed in August of 2020, the month following the end of the tenancy. As a result, I find that the carpet was likely a year or two past its useful life at the end of the tenancy.

Policy Guideline #40 defines useful life as the expected lifetime, or the acceptable period of use, of an item under normal circumstances. It also states that 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. As a result, I find that although I may consider the age of the damaged building elements at the time of replacement when assessing claims for damage, I am not obligated to do so when an item has been damaged in a manner of use other than "normal circumstances", such as intentional damage or neglect.

Although I have found above that the carpet was likely past its useful life at the time the tenancy ended, I am also satisfied that it was damaged as a result of the Tenant's negligence in bringing an unauthorized pet into the rental unit, contrary to section 18 of their tenancy agreement. I am also satisfied that if it were not for the Tenants breach of

section 18 their tenancy agreement, that the carpet would not have needed to be replaced at the end of their tenancy, regardless of its age. As a result, I find that the Tenants are still responsible for some of the replacement costs for the carpet, even though it was more than 10 years old.

No arguments were raised that the replacement carpet was of a higher quality than the carpet in the rental unit at the time of the tenancy. As a result, I find that it was not. As the bedroom closet of the rental unit appears to have been the area most heavily affected by the damage caused by the Tenants' unauthorized pet, and the fact that the carpet was likely past its useful life, I therefore award the Landlord only \$314.37 for carpet replacement, which represents 1/3 of the \$943.11 carpet replacement cost shown in the invoice. In conjunction with the \$302.50 paid to the new occupant for loss of use and loss of quiet enjoyment, I therefore find that the Tenants are responsible for \$616.87 in costs incurred by the Landlord as a result of damage caused to the rental unit by the Tenants' pet.

As the Landlord was successful in at least part of their claim, I also award them recovery of the \$100.00 filing fee pursuant to section 72(1) of the Act. As the parties agreed that the Tenants are owed a \$400.00 credit, I therefore award the Landlord a Monetary Order in the amount of only \$316.87 pursuant to section 67 of the Act; \$716.87 owed by the Tenants to the Landlord, less the \$400.00 credit owed by the Landlord to the Tenants.

Conclusion

Pursuant to section 67 of the Act, I grant the Landlord a Monetary Order in the amount of **\$316.87**. 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. The Tenants are cautioned that costs of such enforcement may be recoverable from them by the Landlord.

Although I believe that this decision has been rendered in compliance with the timelines set forth in section 77(1)(d) of the Act and section 25 of the Interpretation Act, I note that section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 8, 2021

Residential Tenancy Branch