



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, made on August 27, 2020 (the "Application"). The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, site, or property; and
- an order to retain the security deposit; and
- an order granting recovery of the filing fee.

The Landlord's Agent S.W., and the Tenants attended the original hearing on November 24, 2020. During the original hearing, the parties agreed to adjourn the hearing to provide each party an opportunity to re-serve their documentary evidence that they intend to rely on and reconvened hearing. The hearing was adjourned until February 9, 2021. The Landlord's Agent S.W. and the Tenants attended at the appointed date and time of the reconvened hearing.

At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were provided with a full 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 and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for damage to the rental unit, pursuant to Section 67 of the *Act*?

2. Is the Landlord entitled to retaining the security deposit, pursuant to Section 38, and 72 of the *Act*?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2019. During the tenancy, the Tenants were required to pay rent in the amount of \$2,350.00 to the Landlord each month. The Tenants paid a security deposit in the amount of \$1,175.00 which the Landlord continues to hold. The Tenants provided the Landlord with their forwarding address on June 12, 2020, which the Landlord's Agent confirmed having received on the same date. The tenancy ended on July 31, 2020.

The Landlord is claiming \$1,666.99 in relation to replacing the carpet in the rental unit. S.W. stated that the carpet was stained and discoloured at the end of the tenancy. The Landlord provided pictures of the carpet in support. S.W. stated that the Landlord employed a flooring company to attend the rental unit to inspect the carpet at which point it was determined that the stains and discolouration in the carpet could not be removed and replacement would be necessary. The Landlord provided a letter from the flooring company in support.

S.W. stated that the carpet had been installed two years prior to the start of the tenancy and that it was professionally cleaned before the start of the tenancy. The Landlord provided receipts, as well as a copy of the move in condition inspection report in support of the carpet being in good condition at the start of the tenancy.

S.W. stated that he received a quote to replace the carpet in the rental unit, which was provided in the Landlord's documentary evidence. S.W. stated that the Landlord chose to replace the carpet with vinyl plank at the end of the tenancy at a greater cost. As such, the Landlord is only claiming for the quoted amount of \$1,666.99 which is the amount it would have cost the Landlord to replace with carpet.

The Tenants responded and acknowledged that there were stains on the carpet, however, the Tenants did not feel as though the carpet required complete replacement as a result. Furthermore, the Tenants stated that should the carpet have needed replacement, the Tenants value the replacement costs to be less than what the Landlord is claiming for as a result of depreciation seeing as the carpet was 3 years old at the end of the tenancy.

If successful, the Landlord is seeking the return of the filing fee, as well as to retain the Tenant's security deposit.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or 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 what was reasonable to minimize the damage or losses that were incurred.

According to the Residential Tenancy Policy Guideline 1;

The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act*.

The Landlord is claiming \$1,666.99 in relation to replacing the carpet in the rental unit. In this case, I find that the Tenant's left the carpet stained and discoloured at the end of the tenancy, which is beyond what could be considered reasonable wear and tear. As such, I find that the Tenants breached the *Act*.

The Residential Tenancy Policy Guideline 40 is a general guide for determining the useful life of building elements for determining damages;

Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances. When applied to damage 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.

While I have found that the Tenants are responsible for the damage caused to the carpet in the rental unit, I must determine how much compensation the Landlord is entitled to for replacing the carpet. I accept the quote provided by the Landlord in the amount of \$1,666.99. I accept that the carpet was 3 years old at the end of the tenancy. According to Policy Guideline 40, the carpet in the rental unit has a useful life of 10 years. Therefore, the carpet in the rental unit had 7 useful years left. As such, I find that the Landlord is entitled to monetary compensation equal to 70% of the quoted amount provided, **\$1,166.89**.

Having been successful, I find that the Landlord is entitled to recover the **\$100.00** filing fee paid to make the Application. The Landlord has applied to retain the Tenant's security deposit towards the claim.

Section 38(1) of the *Act* requires a landlord to repay deposits or make a claim against them by filing an application for dispute resolution within 15 days after receiving a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to comply with section 38(1) of the *Act*, and does not have authority under sections 38(3) or 38(4) of the *Act* to withhold any deposits, section 38(6) stipulates that a tenant is entitled to receive double the amount of the security deposit.

In this case, the parties agreed that the Tenants provided the Landlord with their forwarding address on June 12, 2020 before vacating the rental unit on July 31, 2020. As there is no evidence before me that the Landlords were entitled to retain all or a portion of the security deposit under sections 38(3) or 38(4) of the *Act*, I find pursuant to section 38(1) of the *Act*, that the Landlord had until August 15, 2020 to repay the deposit or make an application for dispute resolution.

I find that the Landlord submitted their Application to retain the Tenant's security deposit on August 27, 2020 which is outside of the 15 days permitted under the *Act*. In light of the above, and pursuant to section 38(6) of the *Act*, I find the Tenants are entitled to an

award of double the amount of the security deposit paid to the Landlord (\$1,175.00 x 2 = **\$2,350.00**).

The Landlord has demonstrated an entitlement to a monetary award of \$1,266.89. The Tenants have demonstrated an entitlement to a monetary award of \$2,350.00. Setting off these monetary amounts, and pursuant to section 67 of the *Act*, I grant the Tenants with a monetary order in the amount of \$1,083.11 (\$2,350.00 - \$1,266.89 = \$1,083.11).

Conclusion

The Tenants are granted a monetary order in the amount of **\$1,083.11**. The order should be served on the Landlord as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 11, 2021

Residential Tenancy Branch