Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, FFL

Introduction

The landlord filed an application for dispute resolution (the "Application") on November 14, 2020 seeking an order for compensation for damage caused by the tenant, and compensation for monetary loss or other money owed. The landlord applies to use the security deposit towards compensation on these two claims. Additionally, they seek to recover the filing fee for the application.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*") on <arch 8, 2021. Both parties attended the conference call hearing. I explained the process and offered both parties the opportunity to ask questions. Both parties had the opportunity to present oral testimony and their prepared evidence.

At the start of the hearing, both parties confirmed they received the evidence prepared by the other. On this basis, the hearing proceeded.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage or compensation pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The tenant provided a copy of the original tenancy agreement, signed by both parties on October 30, 2015 for the tenancy that started on December 1, 2015. The agreement was revised in 2016. The rent amount was then set at $2,500, and the tenant paid the security deposit of $1,250. This was for a fixed term ending on April 30, 2017. After this term, the tenancy continued on a month-to-month basis.

By the time of the end of tenancy, the rent amount was $2,668. Neither party in the hearing took issue with any pieces of the tenancy agreement that was in the evidence.

In the hearing, the tenant provided that at the start of the hearing, they had a discussion with the landlord regarding the condition of the unit. Upon their move in, the landlord asked the tenant to note anything wrong in the unit. The tenant recalled taking notes, and they did recall that the landlord never actually came to inspect the unit. The landlord provided a handwritten note as evidence, dated December 6, 2015. This is a “list of repairs” as the notation indicates. This lists 15 separate issues, involving separate deficiencies. Among those listed is a “carpet thread loose” and a carpet stain in the bedroom.

The landlord provided a note dated November 22, 2020 from the previous owner. The sale to the landlord here was on September 3, 2015. This former owner stated that they had new carpets professionally installed throughout the house; the whole interior was painted; there was no major damage that was not completed prior to handover; and the landlord state “the house was in immaculate condition at handover date of October 31, 2015”.

The tenancy ended by both parties’ agreement. The tenant finalized the move-out process with documentation. This process of ending the tenancy started in August 2020. The final move-out date was October 31, 2020.

The landlord provided a copy of the “Condition Inspection Report” showing the move-out date of October 31, 2020, and a move-out inspection date of November 3, 2020. The notation shows “Tenant refused to sign.” The report shows a number of items as dirty, and a dent in the fridge and a damaged dishwasher door. With more detail, the landlord stated in the report:

> Carpet in the formal living room was burned and removed. Microwave removed. Walls through out the house so dirty it had to be painted. Carpets so dirty that it had to be removed . . .

In the hearing, the landlord stated they advised the tenant via email to attend a move-out inspection meeting. The tenant's spouse attended – they forgot to call the landlord directly, and instead contacted the landlord's family who attended. By the time the landlord was en route to the meeting, the tenant's spouse had left that meeting.

In the tenant's version, their wife was late to the move-out meeting. They instructed their spouse to sign whatever the landlord presented; however, their spouse reported back that there was no paperwork involved. They specified that the landlord here was not present; however, the generic term "landlord" also applies to the landlord's family who was there at the meeting.

The tenant provided a signed statement of their spouse into their evidence. This notes their impressions upon first moving into the unit – this included an observation of unclean walls with soot, and unclean carpets. The landlord advised the carpet was just cleaned prior to their move-in. Further, the landlord denied the request for painting and more carpet cleaning. In their account of the move-out inspection they provide that the landlord's parent was angry about the state of the unit, and "demand[ed] that we pay for what [they] needed to replace or repair." They maintain that the house was "lived in prior to us moving in" and "it was not a brand-new home as the photos show".

On their Application, the landlord described the types of damage: carpets throughout "not clean, dirty, and beyond repair", with a large part of the living room carpet burned; and unclean walls with holes throughout. They included 144 photos showing the state of the rental unit after the tenant moved out. These include images showing repairs and cleaning underway, wall damage and stains, carpet stains throughout with a large burn, and an intensive cleaning process on blinds and windows.

For comparison, the landlord included 15 pictures that show the state of the rental unit before the tenant's moved in. These pictures are wider in scope, showing entire rooms similar to sales photos, as opposed to the detail used on the after photos which focus on details.

The landlord provided that the unit was built in 1997, it was for sale in August 2015. The pictures enclosed were from the open house offered by the realtor. At the time of sale, the seller advised that the carpets were replaced, in order to have it in perfect condition – this meant the carpets were in "immaculate condition when we gave it to the tenant".

Further, the landlord was aware that the tenant ran some business out of the rental unit, and this contributed to damages. The landlord explained their choice to convert flooring areas in the unit from carpeting to laminate, because laminate is new flooring, and carpets can be damaged.

The landlord submitted a "Monetary Order Worksheet" that sets out the following:

item	Cost
paint for rental unit	$653.68
laminate to replace carpet	$6,325.62
Hired Labour for laminating &painting & cleaning	$4,200.00
TOTAL	**$11,179.30**

The tenant responded to this to say the carpets were not new and the unit was not painted fresh when they started the tenancy. They specified folds in the carpets, and stains present. This resembled soot in the bedroom and kitchen. They admitted to burning the carpet with hydrogen, and they had informed the landlord that they would replace it.

The tenant provided a 5-page written response to the landlord's Application. What is relevant to the landlord's claim here is the tenant's assertion that they told the landlord at the end of the tenancy that the claims as listed were attributable to wear and tear. They outlined that they always assumed there would be a "re-do" to the rental unit, meaning it would be repainted and the carpets changed to floors. They also stated that in any event the carpet would have been replaced, and then they provided that the carpet was "a standard low-level. . . with a duration of no more than 5-7 years and should be replaced."

With reference to the landlord's photos, the tenant's spouse writes that "the pictures submitted are not as we had left it." They did not wash the carpets and walls, thinking that the carpets would at that time be replaced and the interior repainted, as would naturally need doing after 5 years. They then stated this was a "miscommunication", and their subsequent offer to reclean was refused.

The tenant's other family member was also in attendance at the move-out meeting. They stated that upon their entry, the landlord's parent started arguing about the stains and burn hole in one of the ground floor rooms. They reiterated that the carpets had "a yellowish stain to them" when they entered the tenancy in 2015. They also mentioned that a series of indents

was present in the garage floor when they moved in. They provided three images that show folding/creasing in the bedroom carpeting, and what they purport to be stains.

The tenant also provided an image of a message wherein they communicated with the brother of the landlord. They specifically asked the brother to communicate with the landlord's father – not the landlord – about ripping out the carpets and "it does need paint". They stated: "What should we do, cuz filling holes and cleaning the carpet is of no use, don't you think?" They provided their rationale for this: "it would save us time and money".

The landlord provided a 13-page response to individual points of the tenant's written submission. The relevant content thereof is in rebuttal to the tenant's points on carpeting, painting and one-month's rent amount. The landlord addressed the tenant's initial list of deficiencies upon move in (which was delivered some time after their actual tenancy start): this consisted of merely loose carpet thread and carpet stained in bedroom. These were "very minor and does not negate the fact the carpets were not newly installed." The landlord reiterated that the tenant here was the first to live in the house after the landlord purchased it in September 2015.

Additionally, the landlord claimed for reimbursement of the cost of one month's rent. This is $2,668. As stated on their Application: "we had to fix the house as it was not rentable in the condition it was left." In response to this the tenant added that they offered to move out mid-September to accommodate the landlord's having to prepare the unit for re-rental. The tenant provided that the landlord rebuffed this offer, to which the landlord in their written response provided that they did not know the extent of damages until the unit was vacant, which legally would be on October 31, 2020.

Analysis

The *Act* s. 37(2) requires a tenant, when vacating a rental unit to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation, or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

I note that for the purposes of this claim, the landlord must provide sufficient evidence to establish any alleged damage occurred during the tenancy and as such, must have provided evidence of the condition of the rental unit at the start of the tenancy. However, there is no requirement for the landlord to meet the same burden when it relates to any cleaning required at the end of the tenancy.

I find there is no question that the carpets had to come out and the unit needed work on the walls. I find the state of the carpeting – as clearly shown in the photos provided by the landlord – is more attributable to the damage caused by the tenant rather than reasonable wear and tear. What the photos show is <u>not</u> wear and tear within 5 years of this tenancy. The tenant has not provided a good record or account that they remained responsible for the carpets – the prime example of this is the prominent burn that the tenant acknowledged they caused. Moreover, the tenant has not provided sufficient evidence that they notified the landlord of this at any time during the tenancy, and the initial list prepared by the tenant does not come anywhere near defining pre-existing damage to the carpet.

Certainly, the pictures show poor treatment, or neglect, and a clear lack of care and I find it more likely than not this was the case for the entire duration of the tenancy. It appears as if the tenant was treating the carpet as if it were disposable.

The tenant submitted that there was miscommunication at the end of the tenancy; their understanding was that the carpet was going to be replaced in any event. The tenant has responsibility under s. 37 of the *Act*, and this responsibility is not negated by their misunderstanding of the landlord's intentions moving forward. I find the tenant was aware of the state of the carpet, and that this constitutes damage beyond reasonable wear and tear.

Minus evidence to the contrary, I find the cost of laminate flooring is commensurate with the cost of replacement carpet. That includes installation. I find the landlord has established a reasonable expense incurred and I don't consider the switch to laminate flooring to be an upgrade. Rather, it is a replacement.

To make an award, I find the landlord is eligible for the cost of the laminate flooring as it is shown on the paid invoice. That amount includes the underlay, for the total paid amount of $3,210.14. The landlord made a claim total of $6,325.62; however, this total amount includes the amount for a November 2 *estimate*, with no evidence that was a paid amount. Further, I award no amount for "flush nosing" which is a necessary element for laminate flooring, and not carpeting. The tenant is only responsible for the cost of a carpeting replacement amount, including installation. I add $1,500 for *carpet* installation costs, as opposed to a different type of installation for laminate.

The walls also have damage beyond reasonable wear and tear. Discrete areas bear significant damage needing repair while others reveal stains. I attribute stains and minor scratches to reasonable wear and tear; however, the landlord is eligible for an award for damaged portions of the walls. This is for holes as *damage*, as shown in the landlord's photos #67, 131, 132, 134, and 144. For this work and these costs, I award the landlord one-half of the claimed amount. This is $326.84 for paint and other material costs and $600 for the labour involved.

I make no award for the $300 other cleaning that was billed to the landlord on November 14, 2020. There is no evidence from the photos or a comprehensive list of what this work involved. I find the landlord's family members handled a large portion of the cleaning and there is thus no distinction between the work handled by them and the extra amount charged to the landlord.

The invoice to the landlord is dated November 14, 2020. The purchase of laminate flooring was on November 7, and the paint purchase was on November 3 and 4. From this I find the work to make the unit presentable for new tenants was completed by mid-November. There is no other evidence showing it took the time of one entire month to restore the unit to a presentable state. The award for this is one-half the rent amount for that month. Further, there is no evidence that the landlord's efforts at obtaining new tenants was stymied to any further degree by the tenant here. This award is $1,300 for only the timeframe involved in *restoring* the unit to a rentable state.

The tenant breached s. 37 of the *Act*. In sum, I find the landlord is eligible for the following monetary amounts:

- $3,210.14 for the cost of flooring to replace the carpeting
- $1,500 for its installation
- $926.84 for paint materials and work

- $1,300 for loss of November rent.

This total is $6,936.98. The landlord properly made a claim against the security deposit and has the right to do so. With the landlord holding the amount of $1,250, I deduct this amount, for a final award of $5,686.98. This is an application of s. 72(2)(b) of the *Act*.

As the landlord is successful in this application for compensation, I find that the landlord is entitled to recover the $100.00 filing fee.

Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary Order in the amount of $5,786.98 for damages, other money owed, and a recovery of the Application filing fee. The landlord is provided with this Order in the above terms and they must serve the tenant with **this Order** as soon as possible. Should the tenant fail to comply with this Order, the landlord may file it in the Small Claims Division of the Provincial Court to 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 s. 9.1(1) of the *Act*.

Dated: April 8, 2021

Residential Tenancy Branch