Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROOKSWOOD PROFESSIONAL MANAGEMENT and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S FFL

Introduction

The landlord seeks compensation from their former tenant pursuant to sections 67 and 72 of the *Residential Tenancy Act* ("Act").

Both parties attended the hearing. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

Issue

Is the landlord entitled to compensation?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure,* was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issue of this dispute, and to explain the decision, is reproduced below.

The tenancy in this dispute began on November 1, 2020 and ended on April 30, 2021. Monthly rent was $1,825.00. A security deposit of $913.00 was paid by the tenant and which is currently held in trust by the landlord pending the outcome of this application. A copy of the written tenancy agreement was in evidence.

The landlord's representative (hereafter simply the "landlord") submitted a completed Monetary Order Worksheet in which costs for new carpet and installation, for repair of living room carpet, for drywall repairs and painting, and for carpet cleaning were listed. The total on the Worksheet comes to $4,199.73.

However, the landlord states that they are “willing to absorb 50% of painting/drywall repair” costs and only seek $2,799.86 in compensation.

In respect of the claim, the landlord testified that there was a “substantial staining” of bleach on one of the carpets. It required repair. There was also damage caused to the perimeter of the wall where the tenant had attached LED lighting strips, and then subsequently removed them. There was damage to the paint and the drywall. In addition, the landlord sought compensation for carpet cleaning.

Submitted into evidence in support of the landlord’s claim was a completed Condition Inspection Report. This was signed by the landlord’s representative and the tenant. It is noted that the tenant disagreed with the findings of the report at the end of the tenancy and did not agree to any deduction being made from the security deposit.

Also in evidence was a seven-page document containing numerous photographs of the interior of the rental unit, and, a four-page document containing invoices and receipts for carpet installation, carpet repairs, carpet cleaning, and for drywall repairs (including painting and primer, sanding, and cleaning of walls). The landlord stated that the photographs of the interior of the rental unit were taken on the 24th of April.

In respect of the chronology of events, the tenant gave written notice on March 9, 2021 that they would be ending the tenancy effective April 30, 2021. (While the tenant terminated the fixed-term tenancy early, the landlord did not appear to have any problem with this early end of tenancy.)

In a subsequent email dated April 12, 2021, the tenant advised the landlord’s employee (“T”) that the tenant “should be moving the week of the 19th [of April].” During the hearing, the landlord testified that he took this to mean that the tenant would be moved out on April 19. On April 24, the landlord showed the next prospective tenants the rental unit and it was on that date that the landlord “realized how much damage” there was to the rental unit.

The landlord contacted a carpet restoration person who came and inspected the damage. A full carpet replacement was financially out of the question, so the landlord went with a cheaper option: remove some carpet from another room and put it into the affected areas, thus replacing the bleached carpet. An end of roll carpet was then purchased to replace the carpet that had been removed from the room. Later, during rebuttal, the landlord explained that the carpet was a ten-year-old carpet.

On or about the 26 or 27 of April the landlord had painters attend to the rental unit. Again, the landlord reiterated that he was under the wrong impression that the tenant had moved out. On April 27th the painters began prepping and attempting to fix the damage. They ended up just sanding and priming.

It was on this date, however, that the tenant arrived at the rental unit and found the painters in her rental unit (a townhouse, it should be noted). The landlord received a phone call from the tenant who was upset that there were people in the rental unit. The landlord then told the tenant that if she did not want the painters there that she was welcome to tell them to leave. Various phone calls were then made by the landlord to the manager of the painting company about the tenant's being upset. However, the landlord remarked that at no time did the tenant ask them to leave.

Regarding the carpet, the tenant had advised the landlord that she had carpet cleaners scheduled for the next day (that is, April 28). The landlord told the tenant that he could take care of the cleaning and that he would just deduct the amount from the security deposit. The tenant apparently said "O.K." to this proposal.

Generally, the landlord testified that he did everything he could to minimize the final cost. At the very end of the tenancy, on April 30, a Condition Inspection Report was then completed.

The tenant testified that while she was aware that the landlord would be having a "walk through" with the next tenant, she was not informed that this occasion would be one in which the landlord would be looking into issues and taking photographs. "I was only aware that the 24th was to show the new tenant" the rental unit, she explained.

As of April 27, the tenant testified that she still had many items (that is, personal property) in the rental unit. Indeed, the tenant testified that her "vacuum and other items" were still in the rental unit as late as April 30, the last day of the tenancy. A video of this state of affairs was submitted into evidence by the tenant. Also, it was on April 27 that the tenant showed up at the rental unit only to find the door unlocked and shortly thereafter discovered the presence of the painters. The tenant testified that most of the notices to enter the rental unit were given the same day, she was unaware that repairs were underway. They "took it upon themselves to start repairs."

The tenant argued that she had a right to make repairs to the rental unit right up until the end of the tenancy. Right up until the date that the Condition Inspection Report was to be completed.

Moreover, the tenant “clearly stated to the landlord that [the tenant] didn’t want anyone in” the rental unit. She did not want to be charged for work that was being done before she vacated the townhome. In respect of the work itself, the tenant disputed the severity of the wall damage as described by the landlord. Most of the walls were good and “perfectly fine.” Certainly, there was some touching up in one or two rooms, but not such that the entire rental unit needed to be painted. In all, the tenant had “really wanted time to do this [that is, the repairs and cleaning] myself.”

And in respect of the carpets, the tenant admitted that, yes, there were bleach stains. That is why she had agreed to the carpet people coming in, but she did not agree with the amount being charged. Moreover, the tenant submitted that the depreciated value of the carpet ought to also be taken into account.

Analysis

Section 7 of the Act states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

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.

Sections 32(3) and (4) of the Act states that

> (3) A tenant of a rental unit 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.
>
> (4) A tenant is not required to make repairs for reasonable wear and tear.

And section 37(2) of the Act requires a tenant to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, when they vacate.

A. Claim for Carpet Replacement

Turning first to this aspect of the landlord's claim, the tenant acknowledged that they had damaged the carpet. As such, the tenant admits liability through a breach of sections 32(3) and 37(2) of the Act.

Before turning to the amount that the landlord seeks ($1,024.79, but reduced by 50%), the depreciation of the carpet must be considered. In the absence of persuasive documentary evidence by either party as to the actual useful life of the carpet, and from which depreciation may be calculated, *Residential Tenancy Policy Guideline 40. Useful Life of Building Elements* must be applied. It is noted that, on page 5 of the Guideline, that carpets have a ten-year useful lifespan.

In this case, as the carpets were – according to the landlord – ten years old, full depreciation must therefore be applied to the amount claimed. The claim for carpets of $512.40 is thus reduced to zero, and no compensation is awarded.

B. Claim for Carpet Cleaning

Section 37(2)(a) of the Act bears repeating:

> When a tenant vacates a rental unit, the tenant must (a) leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear, [. . .]

What occurred here, in the landlord's well-intentioned alacrity to have the rental unit in tip top shape before the next tenant moved in, is that the landlord had carpet cleaners lined up *before* the tenant had even vacated the rental unit. In other words, the landlord has essentially pre-empted and nullified the tenant's opportunity to fulfil her obligation to clean the carpets as required by section 37(2)(a).

Given these facts, it would be both unfair and unreasonable for me to find that the tenant somehow breached this section of the Act (from which compensation might flow). By having cleaners, of the landlord's choice, come in before the tenant vacated the rental unit, the landlord effectively assumed the responsibility to leaving the rental unit reasonable clean.

Whether the tenant agreed to the landlord's cleaners arriving before she vacated the rental unit is irrelevant: the landlord removed the opportunity for the tenant to take care of her responsibility for cleaning the carpet.

In any event, it is my finding that the landlord has not proven on a balance of probabilities that the tenant breached section 37(2)(a) of the Act, and they are not entitled to any compensation.

C. Claim for Painting and Wall Repairs

This aspect of the landlord's claim follows the same pattern as that of the carpet cleaning. That is, the landlord pre-empted and voided the tenant's opportunity to fulfil her obligations under section 37 of the Act. Section 5 of the Act prohibits any attempt (whether done with good intentions or not) from avoiding or contracting out of the Act.

The fact that the tenant was taken aback and surprised at finding the door unlocked, and the painters working away, strongly suggests that the landlord (again, operating under a well-intentioned but mistaken belief that the tenant was gone and that they were somehow okay with workers being there) took steps to deal with matters that ought to have been left in the hands of the tenant.

As with the claim for carpet cleaning, the landlord took away the opportunity of the tenant to carry out repairs that she was in fact obligated to undertake up until the day that the tenancy ended. Thus, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving that the tenant breached the Act.

Accordingly, the claim as it relates to the painting and wall repairs is thus dismissed.

D. Claim for Application Filing Fee

Section 72 of the Act permits me to order compensation for the cost of the filing fee to a successful applicant. As the landlord did not succeed in their application, I decline to grant them $100.00 in compensation to cover the cost of the filing fee.

Return of Tenant's Security Deposit

Given that the landlord was unsuccessful in this application, the landlord is hereby ordered to return the tenant's security deposit of $913.00 within 15 days of receiving a copy of this decision.

Conclusion

The application is dismissed, without leave to reapply.

The landlord is hereby ordered to return the tenant's security deposit, in full, within 15 days of receiving a copy of this decision.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: November 15, 2021

Residential Tenancy Branch