



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application filed on May 14, 2021 is seeking orders as follows:

1. For a monetary order for damages to the rental unit;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application filed on October 2, 2021, is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Are the tenants entitled to return of the security deposit?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2017. Current rent in the amount of \$2,150.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00. The tenancy ended on April 30, 2021.

The landlord claims as follows:

a.	Carpet Replacement	\$4,547.50
b.	Carpet Cleaning	\$ 157.50
c.	Admin fee/surcharge/services render	\$ 691.00
d.	Filing fee	\$ 100.00
	Total claimed	\$5,496.00

Carpet Replacement

The landlord testified that the tenants caused damage to the den, master bedroom and two other bedrooms as the carpets were horribly stained and had to be replaced. The landlord stated that the carpets were new at the start of the tenancy. The landlord seeks to recover the cost of \$4,547.50.

Filed in evidence by the landlord is a receipt showing they were replaced August 2017, a copy of the condition inspection report (the "Report"), a copy of the receipt for carpet replacement and photographs.

The tenant testified that the landlord has altered the Report. The tenant stated that there were only two issues with the carpet, which was the den and master bedroom, which they agreed they were responsible for in the Report, not the two additional bedrooms. The tenant stated that they have no idea of the landlord's photographs from what rooms they were taken or even if they are the same carpet.

Filed in evidence by the tenant is a copy of the Report, and photographs.

The landlord testified that the tenant was being difficult and would not complete the Report as a result they completed the Report after the tenant left. The landlord stated that the tenant took pictures of the Report prior to the Report being completed.

The tenant argued they were not being difficult.

Carpet Cleaning

The landlord testified that they had to hire a carpet cleaning company to try and remove some staining from the carpets, especially in the dining room because if they had to replace the dining room carpet, the living room carpet would have to be replaced as there is no natural break. The landlord stated that the stains were not all removeable; however, they left the remaining stains to mitigate the cost of replacing the dining room carpet and the living room carpet.

The tenant stated that the main issue they are disputing is the carpet replacement.

Admin fee/surcharge/services render

The landlord testified that they invoice the owner of the property for administrative surcharged for dealing with the issue of the carpets, which is 10% of the value of the carpets . The landlord seeks to recover the amount of \$454.77.

The landlord testified that they also invoiced the owner for services render for having the repairs to the carpet made as it took the total of 1.5 hours, at their billing rate of \$150.00, plus GST of \$11.25. The landlord seeks to recover the cost of \$236.25.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

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

Carpet Replacement

In this case, both parties have provided a different version of events that happened at the move-out inspection. The tenant's version was the Report was altered by the landlord as they added additional damage to the carpets and completed the Report. The landlord's version was the tenant took a photograph of the Report, prior to the Report being completed.

While both versions are probable; however, the onus is on the landlord to prove their version of events.

The Report provided by the tenant does show damage to the den carpet and master bedroom carpet, this is also shown in the landlord's copy. The landlord's copies show damage to the carpets in two additional bedrooms.

In both copies of the Report shows on page 3 End Tenancy section Y. Damage to rental unit or residential property to which the tenant is responsible. Only the den and master bedroom are noted and agreed to by the tenant.

I find it would not be reasonable if there was damage to the other two bedrooms that this damage would not have been noted in this section of the Report because it would be reasonable and logical that all damage to the carpets or rental unit would have been noted at the same time when completing this section of the Report. I find the landlord has failed to provide sufficient evidence to support their version, such as having a witness attend to provide testimony or a video of the inspection. Therefore, I do not award the landlord any amount for the carpets in the two additional bedrooms.

However, I am satisfied that the tenant agreed to the damage cause to the den and master bedroom and that the landlord should be compensated in some amount.

I have reviewed the invoice for carpet replacement, the invoice shows that the carpet being replaced is different than the one in the rental unit, and that there would be a 4 to

5 month delay if they were to replace the existing carpet and the amount for the available carpet was the amount of \$4,547.50

I have compared the above invoice with the original invoice of August 31, 2017 and the amount was \$2,835.00. This is a significant difference of \$1,712.50, even if I consider inflation.

While I accept it would be unreasonable for the landlord to wait 4 to 5 months to replace for the existing carpet; however, it would be unreasonable for the tenant to pay any amount that may be related to the difference between the two carpets, as the landlord is not entitled to receive a better product than what was to be replaced.

Since, I do not have any evidence of what the difference between the two carpets was, and this could be a higher quality carpet and I have no evidence for the estimated cost to replace the existing carpet to compare the difference in value between them. I find it is reasonable to grant the landlord a reasonable replacement value, which would be half the original invoice of 2017, which is the amount of \$1,417.50, this is because I have removed the two additional bedrooms and that amount must be depreciated by the useful life span of the carpet.

Under the Residential Tenancy Policy Guideline 40, the useful life span of carpet is 10 years and has a depreciated value of \$141.75 each year. The carpets were approximately 3 1/2 years old at the time of replacement. This would leave useful life span of 6 1/2 years that the tenant is responsible to pay. ($\$141.75 \times 6/12$ years $\$850.50 + \$70.87 = \$921.37$). I find the landlord is entitled to recover for replacement of the carpets in the amount of **\$921.37**

Carpet Cleaning

In this case, I am satisfied that the landlord hired the carpet cleaning company to attempt to remove the stains from the carpets to mitigate the loss. I find this is reasonable. Therefore, I grant the landlord the cost of carpet cleaning in the amount of **\$157.50**.

Admin fee/surcharge/services render

In this case, the landlord has hired a property manager to oversee the premises. The fees claimed are related to that contract, as an example they are claiming 10% of the value of the carpet and \$150.00 per hours to oversee the project. While I accept the

landlord is entitled to hire whomever they want to oversee the property; however, I do not find the tenant is reasonable for the landlord's personal choices or the expenses related to that contract. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$1,178.87** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,000.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$178.87**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the landlord had claimed against the security deposit within the statutory time limit, and I have authorized the landlord to keep the security deposit, I dismiss the tenants' claim to recover the cost of the filing fee.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: November 24, 2021

Residential Tenancy Branch