



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on May 9, 2022 seeking compensation for and for damage caused by the Tenant. Additionally, they are seeking reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on January 23, 2023. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The Tenant confirmed they received the Notice of Dispute Resolution Proceeding from the Landlord, along with the Landlord’s prepared evidence sent to them via registered mail. The Landlord confirmed they received evidence from the Tenant.

Preliminary Matter – Landlord evidence from January 2023

The Landlord provided two additional pieces of evidence to the Residential Tenancy Branch on January 18 and 19, 2023, via the online submission portal. The Tenant stated they did not receive this evidence, and the Landlord did not verify its delivery to the Tenant. For this reason, I exclude this evidence from consideration, as per Rule 3.17 of the *Residential Tenancy Branch Rules of Procedure*. Any consideration of this late evidence would unreasonably prejudice the Tenant.

Issues to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenant, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Landlord provided a copy of the tenancy agreement, which they signed with the Tenant on December 31, 2020. There were initially two Tenants in this agreement; however, after some time one Tenant moved out, leaving the Tenant who is the Respondent here as the sole occupant, agreeing to a shorter term.

The rent amount was \$4,995 per month. The Tenant paid a security deposit of \$2,497.50 on January 4, 2021, and a pet damage deposit of \$2,497.50 on that same day.

The Landlord stated in the hearing that the “expectation was to have the unit as clean as it was when [the Tenant] moved in.” At the start of this tenancy, the rental unit had just been renovated, with new carpeting. The Tenant confirmed these details in the hearing.

The parties met for a move-in inspection on January 30, 2021. The completed report from that inspection indicates minor flaws; however, no issue with the carpet is indicated. The Tenant signed the report to show their agreement that the report represented the condition of the rental unit at the start of the tenancy.

They asked the Tenant their plan for cleaning, to which the Tenant replied initially they would have hired cleaning at the rental unit two times per month. The Tenant’s recollection in the hearing was that a cleaner would attend once per month.

At one point in the tenancy, the Landlord provided the Tenant with their own contact for any issues requiring carpet cleaning. This was after a guest of the Tenant had spilled something on the carpet; this led to the first stain. The Landlord provided the explicit instruction to call that person if any accident or mishap required the carpets to be cleaned. The Landlord also provided two smaller rugs to lay down in higher traffic areas within the unit, as a preventive measure against stains or frequent wear.

The Landlord stated that two dogs were allowed, and they took no issue with the Tenant having dogs of their own. They recalled the Tenant stating that dogs would not be in the carpeted areas. The issue lies with the frequent visitors and guests of the Tenant who stayed for inordinate lengths of time, with pets of their own. The Landlord cited one example of a friend who stayed for months with two more dogs of their own.

The Landlord provided specific detailed images of stains on the carpet that occurred during the tenancy, as well as images on what they discovered at the end of the tenancy. These are 8 specific stains highlighted in each individual photo. As well, the Landlord provided a specific photo of an area referred to as the "landing".

In the hearing, the Tenant confirmed that they had a lot of guests. They noted that after the first stain (caused by a dog eating a carrot on a carpeted area), "things took a turn" in their relationship with the Landlord. This prompted the Landlord's initial call to their own carpet cleaner contact, who stated, as recalled by the Tenant: 'cashmere carpets . . . very difficult in nature. . . '

With reference to the Landlord's photos, the Tenant identified the carrot-eating incident, as well as another specific incident when their dog was ill, causing a stain that transferred through the Landlord's movable rug and into the carpet. The Tenant stated they did their best to clean the stain, and this happened very late in the tenancy. In the hearing, the Tenant confirmed that the instruction from the Landlord was to not clean stains on their own.

The Landlord and Tenant signed a Condition Inspection Report, completed by the Landlord, after the inspection on April 30, 2022. The Tenant indicated that "this report fairly represents the condition of the rental unit", and signed the report; however, they did not sign to indicate they agreed with full reductions of both the security deposit and the pet damage deposit. The Tenant noted additional notations in the Landlord's copy concerning the deposits; the copy they provided in their own evidence shows more blank spaces on the final page. The Tenant's video shows the report directly, with the Landlord present, at the time of signing that document on April 30.

In the hearing, the Tenant observed that the Landlord captured a video of damage in the rental unit; however, this video does not appear in the Landlord's evidence for this hearing, and the Tenant commented that the Landlord made this video prior to hired cleaning staff arriving for a final move-out clean at the rental unit. In their own evidence, the Tenant provided a video in which they stated that the cleaners had not yet arrived.

Regarding the final state of the rental unit, the Landlord stated it was in “a terrible state”. They had to contact their carpet cleaner, who then queried why they did not receive a call from the Tenant about stains. According to the Landlord, this carpet cleaner’s evaluation was to say the entire carpet needed to be replaced.

The Landlord provided a Monetary Order Worksheet, totalling \$14,511.11, dated May 9, 2022:

- \$10,041.49 for replacement and installation of the same type of carpet in the living room, “Capra Color Beacon”, invoice in evidence
- \$3,062.77 for replacement/installation of carpeting on the stairs, invoice in evidence
- \$1,046.85 for cleaning services, no invoice in the evidence

The Landlord also provided a separate quote for a different brand of carpeting for the living room, totalling \$5,498.35, dated May 1, 2022. In the hearing the Landlord provided this was for use of the “cheapest fill-in” kind of carpet that would be available (*i.e.*, not carpeting as was in place in the rental unit). The Landlord also commented that they obtained quotes for necessary work; however, they did not have the carpet changed in the rental unit prior to the date of this hearing.

In their evidence, the Tenant also provided a message from the cleaner they hired at the end of the tenancy. This cleaner described the Landlord as stating they would “destroy [the Tenant’s] life”, and the Landlord was “adding things on” as additional cleaning items exterior to the rental unit. The cleaner described extra costs and “an extra 4 hours of work” to clean grout between the tiles. In total this was 18.5 hours of work, for which the Landlord “added on another 10 hours of cleaning.” The total invoice, itemized in a separate email to the Tenant, was \$2,750.

The Tenant also provided six statements from their previous guests to the rental unit. These attest to the Tenant taking “very good care of the place”, with the majority of the brief messages noting no scents indicating that pets had created a problem.

Analysis

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 to 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 if I determine that the claim is valid.

To be successful in a claim for compensation for damage or monetary 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.

The Landlord has claimed for specific damage to the carpets in the living room of the rental unit. This work was not accomplished and the Landlord relies on a quote for the amount claimed, to replace carpets with the same brand as that present at the start of the tenancy. The Landlord did replace carpets on the stairs for which they also claim compensation.

I am satisfied that damage to the carpet exists in the form of stains, as presented by the Landlord in pictures in their evidence.

The *Act* s. 32 provides that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. Further, a tenant must repair damage that is caused by actions or neglect of the tenant or guests; however, this does not apply for damage from reasonable wear and tear.

The Landlord also described garbage strewn outside and inside the rental unit as well as foul odours. This was not captured in the evidence in which they focused on the carpet. Aside from specific carpet stains that the Tenant was made aware of, I am not satisfied that any other cleaning was something beyond the obligations of the Tenant set forth in s. 32. With that, cleaning is not “damage” in the rental unit. Moreover, I find as fact the Tenant spent a considerable sum for an exceptional level of cleaning in the rental unit, as attested to in the cleaner’s message to the Tenant.

With this finding, I grant no compensation to the Landlord for cleaning in the amount of \$1,046.85 as listed on their worksheet. There was no invoice to show this work was completed in the evidence; therefore, I am not satisfied of the value of this loss to the

Landlord. I dismiss this piece of their claim with no proof of damage or loss, or the value thereof.

I find as fact that the Landlord accepted the Tenant's two dogs and allowed the Tenant to move in with these pets. The Landlord alluded to mentioning that the dogs were not allowed in the living room area; however, this was not presented to the Tenant in writing, and there is no caveat in the agreement or an addendum that specifies this.

The Landlord and the Tenant were in agreement that the carpet was new at the start of this tenancy. I find as fact the Landlord did not make explicit an instruction about cleaning the carpet – amounting to a specific instruction to the Tenant *not* to clean stains and call in an expert – until an incident involving a carrot on the carpeting. This instruction was not set out explicitly in writing to either assure the Tenant's understanding of this instruction, or in a piece of the tenancy agreement to ensure that the Tenant complied with that instruction. Provided for in writing, that could be a reasonable agreement between the parties, despite two dogs residing in the rental unit; however, I find the instruction (amounting to a provisional agreement from the Tenant) was not as explicit as it appears it needed to be given the value the Landlord places on this carpet.

This leaves s. 32 of the *Act* in place. That is “reasonable health, cleanliness and sanitary standards throughout the rental unit”. I find this is the standard to which the Tenant must be held, given that the Landlord assumed the risk, having pristine carpet in place, yet agreeing to the Tenant having two dogs and two children. Similarly, there were no explicit provisions against the Tenant having guests who brought pets of their own.

I find the Tenant was aware of the value the Landlord placed on the carpet; however, I find “reasonable . . . cleanliness and sanitary standards” are the applicable standards to which the Tenant must comply. This “reasonable” component, I find, extends to carpet maintenance. It appears that this type of carpeting was more prone to setting stains, requiring special care. I find it acceptable that the Tenant could be informed of the need for special care; however, the Tenant cannot be held to a standard higher than what is set out in s. 32 of the *Act*.

Chiefly, for the bulk of responsibility for keeping the place to the reasonable cleanliness standard, they must be able to attend to and/or clean stains as they arise, on their own, without a carpet service specialist attending for each incident, within a very short period of time to avoid stains setting in. That is too high an expectation for any tenancy. New

carpets, of delicate fibre or material, should not force extra duties on the Tenant beyond what is set out as the reasonable cleanliness standard. Again, this is with consideration to the fact that the Landlord was aware from the outset that the Tenant had pets, and then learned the Tenant had different guests who also had pets.

For these reasons, I find the Landlord did not minimize the loss to them, in seeking compensation for complete carpet replacement. As of the date of the hearing, the Landlord only had carpet replaced on the stairs, and that was a different, less expensive variety than that in the living room as shown on the invoice. The Landlord provided evidence of two stains on the stairs in their evidence. From comparing the images and the invoices, I find the carpeting on the stairs was of a different variety than that in the living room, and there is no explanation why a carpet shampoo or deeper carpet cleaning was not an option for the Tenant on the stairs. However, the instruction to the Tenant was 'hands off'.

The Landlord highlighted two stains on the stairs. I am not satisfied this required carpet replacement, and there was no evidence of a deeper clean applied to that area which I determine was a higher-traffic area. For these reasons, I dismiss this part of the Landlord's claim for compensation. I am not satisfied of the need to replace the stair carpeting because of two stains, and replacing the carpet was not an effort by the Landlord at minimizing their loss.

For the replacement of carpet of the same type on the living room, I fall back on the standard in place in the *Act*, minus any other explicit agreement between the parties especially for carpet maintenance which in any case would be too high a burden on the Tenant who is allowed to have pets and guests who also bring pets.

The replacement of the living room carpet in its entirety is not warranted in this situation and does not represent an effort by the Landlord at minimizing the loss. I find the Landlord jumped to the conclusion that full carpet replacement was the only option here. Factoring in the need for special care for these carpets, on an as-needed basis, was too tall an order to place on the Tenant whose only obligation is set out in s. 32.

I accept this was damage to the carpet. This is due to the Tenant being negligent in dealing with stains, yet with consideration to the fact that the only way they could deal with stains was by calling for special care which is unreasonable. This was not carpet that was suitable for this type of tenancy, with pets, children, and guests with pets of their own. I find the Landlord was accepting of a high rent throughout this tenancy, and also allowed for the Tenant's pets as well as others who visited to the rental unit. I also

consider that the Tenant spent a considerable sum in attending to thorough cleaning in the rental unit at the end of the tenancy.

I grant the Landlord a suitable sum for carpet issues, should they choose to replace the carpet with a lesser-maintenance variety. I note this is for replacement of the carpet *only*, with no record showing damage to underlay or the need for its replacement which I find less likely would be necessitated with more standard carpeting that the Tenant would be able to clean on their own when required, and allowed to clean thoroughly at the end of the tenancy. I grant the full amount of the pet damage deposit; that is \$2,497.50. This is an amount that equates to that shown on the invoice the Landlord presented for an alternative brand of carpeting in the living room area. Because the Tenant provided for thorough cleaning at the end of the tenancy, at significant cost, I grant no compensation to the Landlord for removal/disposal/installation of carpet in the living room.

I sum, I grant the Landlord compensation in the form of the pet damage deposit, for damage to the carpet. I dismiss all other pieces of the Landlord's claim, without leave to reapply. Because the Landlord was not successful for the most part in their claim, I order no recompense of the Application filing fee.

Conclusion

I order the Landlord to pay to the Tenant the amount of \$2,497.50; this is the return of the security deposit. I grant the Tenant a monetary order for this amount. The Tenant may file this monetary order at the Provincial Court (Small Claims) where it will 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: January 26, 2023

Residential Tenancy Branch