



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing was convened under the *Residential Tenancy Act* (The “Act”) in response to cross applications from the parties.

The Landlord filed their application on February 15, 2023, and seeks the following:

- A monetary order for damages pursuant to section 67 of the *Act*.
- Authorization to retain the Tenant’s security deposit, pursuant to section 38.
- Authorization to recover their filing fee from the Tenant.

The Tenant filed their application on February 22, 2023. The Tenant seeks:

- A monetary order for the return of their security deposit.
- Authorization to recover their filing fee from the Landlord.

Both parties acknowledged being served with their counterparty’s application and evidence by registered mail, in accordance with the *Act*.

Background and Evidence

The parties agreed that this tenancy began on September 24, 2020, and ended on February 1, 2023. The Landlord collected security deposit of \$1,750.00 and a pet damage deposit of \$1,750.00. On February 15, 2023, the Landlord returned 1350.00 of the Tenant’s security and pet and damage deposits, along with accrued interest in the amount of \$8.61, to the Tenant, by e-transfer. The Landlord withheld \$2,150.00 for damages they claim the Tenant caused to the Rental Unit’s carpet flooring, door frame and for a fine issued to the Landlord by their strata corporation for the actions of the Tenant.

During the hearing the Tenant agreed that they are responsible for damage to the door frame and for the strata fine, in the amounts of \$299.25 and \$200.00, respectively.

The parties agreed that condition inspection reports were completed in accordance with the *Act* and *Regulation* at the start and end of the tenancy. I have reviewed the condition inspection report, submitted by the Landlord, which is signed by both parties. On part “Z.” of the condition inspection report, the Landlord has written the following:

“The carpet in bedroom (2) is damaged. To be changed with similar or change whole carpet. To be same shape.”

The Tenant submitted a copy of the condition inspection report as well, which, unlike the Landlord's copy is unsigned. No explanation was provided for this discrepancy during the hearing by the Tenant and the Tenant did not dispute the Landlord's copy. However, in their application the Tenant has written that the end of tenancy condition inspection report is unsigned. The copies provided by the parties are otherwise the same. In an email to an agent of the Landlord, R.L., dated February 14, 2023, at 11:27 pm, the Tenant states: “we did the inspection for more than an hour and a half and after signed the inspection documents...”.

The Landlord testified that on February 1, 2023, the parties took part in an end of tenancy condition inspection. After the parties finished the inspection and finalized the condition inspection report, the Landlord and Tenant vacated the Rental Unit. The Landlord returned to the Rental Unit the following day and discovered that the carpet in bedroom (1) is stained. The Landlord testified that the reason they did not realize the stain the previous day is because the Tenant had just finished cleaning the carpet and the carpet was still wet. When the carpet dried the next day, the Landlord discovered the stain, which they believed was pee stain from the Tenant's dog.

Email and text message evidence submitted by the parties shows that they discussed the damage to carpet flooring in both bedrooms over a period of approximately 15 days. On February 6, 2023, the Tenant agreed to clean the carpets a second time and they hired a carpet cleaning company to clean bedroom (1). The parties agreed that the carpet in bedroom (1) became much worse after the second cleaning.

The Tenant provided pictures of the carpet in the first bedroom after the first cleaning and after the second cleaning. I have reviewed both pictures. While the stains look the same, the size of the affected area is far greater after the second cleaning. The Tenant testified that the carpet's underlay was either dirty or there was some other construction defect that caused the stains. The Landlord testified that there was nothing wrong with the underlay. The Landlord testified that the Rental Unit was brand new when it was rented to the Tenant in 2020.

On February 8, 2023, the Landlord emailed the Tenant and stated, in reference to the second carpet cleaning in bedroom (1), that “I wasn't there when it finished. He told me as well, but last time it looked clean when it was wet. I hope it will get clean after drying”. In a separate WhatsApp message between the Landlord and the carpet cleaning company, following the second cleaning, the carpet cleaning agent states the following to the Landlord (the “Carpet Cleaner's Text”):

“Dear [Landlord]. Very nice to meet you tonight. If you check the carpet tonight, you’ll see that it’s clean. I did my best as you asked ... If stain comes up again after drying, it is a problem with 100% of carpet installation ... If it’s dog pee, it should smell and the shape of the stain should spread out in a circle. But all the stain look like irregular. If you spread a new carpet later, I want to watch together, but you’ll see a dirty object or solution under every stain.”

The Tenant provided several pictures of the underlay which, based on the message above, appear to have been taken by the carpet cleaning company when the Landlord was changing the carpet. The underlay of the carpet appears brown in spots. The Landlord testified that the underlay was perfectly fine. The Tenant did not explicitly testify what the underlay pictures are showing beyond generally testifying that the underlay may have been dirty.

On February 12, 2023, the Tenant wrote to the Landlord and stated that they are willing to pay \$300.00 for “partial replacement for the palm-sized beverage stain in the second bedroom” and not for replacement of carpets in both bedrooms.

On February 14, 2023, the Tenant emailed R.L., the Landlord’s agent, and explained that when they vacated the Rental Unit, bedroom one was spotless. In their reply to the Tenant, R.L. stated that they have consulted another agent of the Landlord, and they believe the carpet cleaning was done incorrectly, perhaps with hot water, which may have caused the glue under the carpet to become loose and to stain the surface.

Analysis

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the *Act*. The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When a party makes a claim for compensation, they must prove the following on a balance of probabilities:

1. a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
2. loss or damage has resulted from this non-compliance;
3. the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
4. the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 7(2) of the *Act* states a landlord who claims compensation or loss that results from a tenant's non-compliance must do whatever is reasonable to minimize the loss.

Section 32 of the *Act* states that 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."

Section 37 of the *Act* states that when a tenant leave the rental unit, they must "leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Finally, Section 38 of the *Act* states that within 15 days of either the tenancy ending or the date that the landlord receives the tenant's forwarding address in writing, whichever is later, a landlord must repay a security deposit to the tenant or make an application for dispute resolution to claim against it. In this case, the Landlord applied for dispute resolution on February 15, 2023, 15 days after both the end of tenancy and the date the Tenant provided the Landlord with their forwarding address.

As the Tenant has agreed to pay the strata fine and the cost to fix the door frame damage, the only decision I must make is regarding the carpet damage in the Rental Unit and whether the Tenant is responsible for some or the entirety of the Landlord's \$1,650.00 replacement fee.

The Landlord provided undisputed testimony that a condition inspection report was completed in accordance with the *Act*, on February 1, 2023, the last day of the tenancy. The Landlord provided a signed copy, the Tenant provided an unsigned copy. However, the Tenant, in their email communication with an agent of the Landlord, on February 14, 2023, stated that they "signed the inspection documents". During the hearing the Tenant did not testify regarding this discrepancy. Therefore, I find that, on a balance of probabilities, the condition inspection report provided by the Landlord is the true copy and that the report was indeed signed as indicated in the Tenant's email to R.L. on February 14, 2023.

Section 21 of the *Residential Tenancy Regulation*, states that in "dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary."

In this case the parties agree that the February 1, 2023, condition inspection report only mentions the stains to bedroom (2), which the Tenant agreed they were responsible for.

In their written communication with the Landlord and their agents, between February 1, 2023, and February 15, 2023, they estimate the damage in bedroom (2) at \$300.00.

The parties agree that the bedroom (1) stains became worse after the Tenant hired a cleaning company a second time. I have reviewed the pictures submitted by the parties after cleaning attempt 1 and 2. In both cases, the stains are similar in colour, but it is the scope and area of damage that is different. In this case, I accept the Tenant's testimony and evidence that bedroom (1) was clean until they hired the cleaning company, which cleaned the carpet on or about the last day of tenancy, the same day the parties completed the end of tenancy condition inspection. In both cases, the carpet appeared clean when wet, but became noticeably worse after the carpet dried. The Landlord viewed the carpet when it was wet after the first cleaning and testified that it was clean. But they were not present when the carpet was wet the second time. However, the Carpet Cleaner's Text states that they managed to clean the carpet and that the Landlord is welcome to view it later. They then informed the Landlord that if the stain reappears, it must be because of the faulty underlay.

The Tenant testified that the stains surfaced because of a construction defect. The Landlord's agents, in their communication with the Tenant, indicated that the cause may have been a combination of hot water used by the cleaning company and the type of glue used under the carpet. No evidence was provided by either party to show that the glue was indeed the culprit or that the cleaning company used hot water. The Carpet Cleaner's Text indicates that the carpet company is putting the blame on the underlay.

In this case, for me to award the Landlord any monetary award for the cost of carpet replacement in the first bedroom, I must first find the Tenant responsible for the stains. There is no evidence before me which indicates that the cleaning company used defective methods. I also can't find, on the evidence before me, that the carpet construction itself was faulty. However, the Landlord is the party that has the burden to prove their claim. On the evidence before me, I am not able to find, on a balance of probabilities, that the Tenant contravened the *Act* or the tenancy agreement by causing stains to the carpet in bedroom (1). For clarity, I have already found that the stains in bedroom (1) appeared after the carpet was cleaned by the carpet cleaning company, but to hold the Tenant responsible, I would need further evidence from the Landlord which shows that the cleaning company's methods were faulty. It is entirely possible that the carpet's underlay was dirty or that an incorrect adhesive was used during installation. In the circumstances I cannot find that the stains were caused by the actions or neglect of the Tenant, or a person permitted on the residential property by the Tenant and I deny the Tenant's \$1,650.00 claim.

However, the Tenant did agree that they caused the stains in the second bedroom and therefore contravened section 32 of the *Act*, as these stains go beyond normal wear and tear. I have viewed pictures of the stain and it is approximately 1 foot x 1 foot.

The Landlord provided evidence that they sought several quotes for replacement carpeting, and they went with the cheapest option available to them. The Tenant disagrees with a complete carpet replacement. Neither party provided testimony about the possibility of changing only the stained portion of the carpet. However, the Landlord did testify that they were able to source the original carpet from a distributor. An estimate was provided for \$3,140.07 for the distributor to remove and dispose of the existing carpet in two bedrooms, and to supply and install new carpeting and underlay. Materials were estimated at over \$1,700.00 and labour at approximately \$1,200.00.

In this case, section 67 of the *Act* directs me to also consider the issue of mitigation of damages. No estimate was provided to show how much it would cost to patch 1-2 feet of carpeting with the original carpeting, which the Landlord had access to. In the circumstance, I find that the Landlord did not adequately mitigate their damages. I accept their testimony that they chose to replace the carpet in both bedrooms because the first bedroom's carpet needed a new carpet. However, as I have outlined above, I have not found the Tenant responsible for the damage to bedroom (1). In the circumstances, without any evidence from the Landlord to show how much it would cost to either patch 1-2 feet of carpeting or to clean 1-2 feet of stains, I find the Tenant's \$300.00 offer fair in the circumstances. I award the Landlord \$300.00 for nominal damages in the second bedroom.

As the Tenant was substantially successful in this application, their application for the return of their \$100.00 filing fee from the Landlord is granted pursuant to section 72 of the *Act*. The Landlord's application for their filing fee is dismissed without leave. I note that in their communication with the Landlord between February 1, 2023, and February 15, 2023, the Tenant was willing to pay for the door damage and \$300.00 towards the cost of the second bedroom stain. In granting the Tenant their filing fee, I have also considered those facts.

Conclusion

The Landlord is awarded \$799.25 for the Rental Unit's door frame (\$299.25), stain in the second bedroom (\$300.00), the Bylaw Fine (\$200.00).

The Tenant is awarded their \$100.00 filing fee, and the difference between the \$2,150.00 aggregate deposit held by the Landlord, along with interest, and the \$799.25 monetary award above.

I grant the Tenant a Monetary Order of **\$1,473.98** as set out below:

| Monetary Issue | Granted Amount |
|---|-------------------|
| Return of the Tenant's security and pet damage deposit | \$2,150.00 |
| Less: monetary award to the Landlord for the Rental Unit's door frame (\$299.25), stain in the second bedroom (\$300.00), the Bylaw Fine (\$200.00) | -\$799.25 |
| Interest calculated on the \$1,350.75 portion of security deposit that should have been returned to the Tenant at the end of the tenancy (calculated from September 6, 2020, to November 17, 2023). | \$23.23 |
| Filing fee to the Tenant | \$100.00 |
| Total Amount | \$1,473.98 |

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 16, 2023

Residential Tenancy Branch