



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, O, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and the tenant's agent. The tenant herself was not available to provide any testimony for medical reasons.

Prior to the hearing the tenant's agent submitted documented statements from him; the tenant's mother and the tenant's sister to the Residential Tenancy Branch, however he did not provide those documents to the landlord.

At the outset of the hearing I advised both parties that as the agent had not served these documents to the landlord I would not consider them in the decision but that the agent would be permitted to provide any testimony he felt relevant to and from the documents.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the rental unit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on February 15, 2011 for a biweekly rental beginning on February 12, 2011 with rent of \$375.00 due on the 1st and 15th of each month with a security deposit of \$375.00 paid on February 12, 2011.

The parties agree that while the tenant moved out many weeks prior to the end of the tenancy, the tenant relinquished occupancy to the landlord on November 30, 2011. A move out condition inspection was completed by the landlord with the tenant on the same date.

The landlord has submitted a copy of the Condition Inspection Report with the move in condition recorded and acknowledged by the tenant and landlord on February 12, 2011 and with the move out condition recorded and acknowledged by both parties on November 30, 2011.

The Condition Report also indicates in Section Z: "Damage to rental unit or residential property for which the tenant is responsible: as written above. Deposit kept to compensate." [sic]

The Report clearly indicates that there were cat urine stains and odours emanating from the drywall and moulding in the kitchen, living room, master bedroom and den and in the carpeting in the living room, master bedroom (including inside a closet), and den.

The landlord testified that she was first made aware of the urine problem after the tenant had removed all her belongings on November 30, 2011. The tenant's agent testified that the landlord had called the tenant on or before November 24, 2011 and it was agreed the tenant's father would make some repairs to the drywall in one of the rooms in the unit specifically for damage by cat urine.

The agent testified that he did make those repairs on November 24, 2011 and at no time after that did the landlord inform the tenant of any additional repairs being made. The landlord testified that she informed the tenant at the move out inspection that additional work would need to be done for which they would seek compensation.

The landlord also clarified the timeline of events and that she had been confused with the dates in her earlier testimony. She submits that it was shortly before November 24, 2011, after the tenant had moved her belongings out of the rental, that she first noted the urine smell.

The landlord testified that on November 29, 2011 she purchased a black light urine detector and determined there were substantially more areas where urine was found than what the tenant's agent had fixed previously and that as a result she contacted several flooring outlets to seek advice on how to deal with the issue.

The landlord stated that she had been informed by all the places she contacted that based on the description she provided them over the phone she was advised to have the carpets removed and so she verbally indicated to one of the outlets that she would buy replacement laminate flooring from them and she purchased the flooring on November 30, 2011.

The landlord testified that she discussed all of these matters with the tenant during the move out inspection and that despite the tenant relinquishing her security deposit the landlord would be seeking additional compensation.

The tenant's agent, who had driven the tenant to the inspection, testified the tenant told him after she finished the inspection that she had forfeited her security deposit for the damage caused by the cat urine and that all matters were resolved.

The landlord seeks the following compensation:

Description	Amount
Drywall Repairs	\$336.00
Baseboards	\$274.89
Paint and Supplies	\$110.90
Flooring	\$2,458.48
UV Light urine detector	\$24.99
Terry towels	\$15.97
Spot Cleaner	\$12.99
Photographs (evidence)	\$67.36
Total	\$3,301.58

Analysis

From the evidence and testimony of both parties I accept the Condition Inspection Report provided into evidence accurately reflects the condition of the rental unit at the end of the tenancy and that the tenant has acknowledged by signing the report that she was aware of the extent of the damage to the rental unit and that it resulted during the tenancy.

While I accept that the landlord did take some steps to determine the extent of work to repair the flooring I note that the landlord did not have an expert in flooring assess the damage first hand. I note she obtained advice and acted on that advice by providing only a verbal description of the conditions over the phone to experts.

As such, I find the landlord has failed to establish there was a requirement to replace the carpets or why cleaning the carpets professionally would not have provided additional useful life for the carpets, thus taking all reasonable steps to mitigate any loss.

I accept that the landlord, through the provision of receipts and invoices, has established the value of the loss. From the landlord's testimony she was aware at the time of the move out inspection that she intended to replace the flooring and in fact had already verbally ordered the flooring and would have been aware of that cost at the time she met with the tenant for the move out inspection.

In the case of verbal testimony, I find that where testimony is clear and both the landlord and tenant agree on the events, there is no reason to question what occurred. However

when the parties disagree with what transpired, the disputed testimony, by its nature, is virtually impossible for a third party to determine facts without some form of corroborating evidence.

In regard to the testimony provided by both parties about the discussion between the tenant and the landlord during the move out inspection where the landlord would be seeking additional compensation, it is clear the parties disagree with the version of events.

I acknowledge that without the tenant's direct testimony I must rely on third party knowledge of the discussion from the tenant's perspective, however, as this is the landlord's claim for compensation the burden is on the landlord to provide sufficient evidence to support the claim.

The only corroborating evidence or record of the move out inspection and any discussions or agreements that were made during the inspection submitted into evidence is the Condition Inspection Report itself and I therefore have relied upon the content of that report for the following finding:

I accept, from the wording in the Report, the parties agreed that the landlord would keep the security deposit as compensation for the damage recorded in the Report. I also accept the landlord was aware of the cost of at least the flooring repairs, which makes up the majority of the landlord's claim, at the time of the inspection.

In the absence of any disclaimer or additional statements that the landlord would seek additional compensation, I find, based on the balance of probabilities, that the tenant signed over her security deposit with the understanding that this would settle all claims.

Conclusion

For the reasons noted above, I dismiss the landlord's Application in its entirety.

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: March 02, 2012.

Residential Tenancy Branch