



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with two related applications. One file is the landlords' application for a monetary order and an order allowing retention of the security deposit and pet damage deposit in partial satisfaction of the claim. The other file is the tenants' application for return of the security deposit and pet damage deposit in full. Both parties appeared and had an opportunity to be heard. As the parties and circumstances are the same for both applications, one decision will be rendered for both.

Issue(s) to be Decided

Is either party entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced June 1, 2013. The monthly rent of \$1250.00 was due on the first day of the month. The tenants paid a security deposit of \$625.00 and a pet damage deposit of \$625.00. A move-in inspection was conducted and a move-in condition inspection report completed on June 1, 2013.

The tenants' circumstances changed and the tenants had to move out of the rental unit. The tenancy was ended by mutual agreement effective November 30. The landlords were able to re-rent the unit starting December 1.

The parties scheduled the move-out inspection for noon on November 30.

When the landlords arrived at the rental unit the tenants reported that they had had the carpets cleaned the previous day by the company recommended by the landlord and when the carpets dried two problems emerged. The first was that a large pet stain was still in the carpet in the dining area. The second was that a number of droplet sized green stains had appeared in the dining room and one of the bedrooms. The tenant had called the cleaner back and he was working on the carpets.

Although no one knew the source of the green stains the tenant guessed it was food colouring dropped when she was making Play-Doh with her children. It was only when the carpets were dampened as part of the cleaning process that the green drops came up.

The parties walked through the unit. (Although there was conflicting evidence about when the male landlord and the male tenant came or left, that is irrelevant.) The female landlord pointed out some cleaning issues; the female tenant cleaned all of the spots identified.

The parties agreed they would meet the next day to see what the carpet looked like after it had dried. The tenants gave the landlords the keys and their forwarding address in writing. The landlord testified that she did not want to complete the move-out inspection report until the situation with the carpet was clearer.

The landlords immediately set to work preparing the unit for the new tenants who were arriving the next day. They spent about seven hours patching holes and repairing walls. They attributed most of this work to normal wear and tear but they are claiming two hours labour - \$120.00 – for a hole caused by a door knob. They said the tenants had tried to it but had not done a very good job. The tenants acknowledged the hole but said the landlords had assumed responsibility for it during the inspection because there was no door stopper.

It was that evening when the landlords discovered that the unit was not as clean as it had first appeared. The female landlord testified that she spent most of the morning of December 1 frantically cleaning. She was quite panicky because the new tenants were due at noon and she was not sure they would have everything ready in time.

Around 11:30 am on December 1 the landlords called the tenants, who promptly came to the rental unit. The tenants said that when they went back they thought the only outstanding issue was the carpet. They wanted to complete the condition inspection report. Instead the landlords were very agitated, only talked about the cleaning issues, and told the tenants they did not have time to talk about the carpets. When the tenants asked why the landlord had not called them the previous evening the landlords said they did not have time. The meeting ended acrimoniously.

As it turned out the pet stain came out after the second cleaning but the green spots did not. The landlord testified that the carpet cleaner told her that it was food dye and it would not come out.

The landlord obtained a quote for replacing the carpet in the living/dining room in the amount of \$2400.00. Although the spots are only in the dining area the landlord points out that it is one open room. The quote for replacing the bedroom carpets was \$1983.24.

The landlord, who is a real estate agent, testified that the home was built in 1992 and they purchased it in 2010. She testified that the carpets in the bedrooms appeared to be the original carpets. The carpet in the living/dining room appeared newer but she did not know how old it was. The landlords filed photographs of this room taken during a previous tenancy to show they were in good condition. The landlords claim \$2400.00 for carpet replacement. They made an allowance for depreciation in the amount of \$1983.24.

After the landlords obtained the quote for the carpet they sent the move-out condition inspection report to the tenants with a request for compensation. The tenants acknowledged receipt of the report on or about December 7 or 8.

The tenant has made inquiries with other flooring companies about alternatives. One store has suggested replacing the stained areas with plugs made from leftover or spare pieces of the carpet. The landlord says they have no extra pieces of carpet and, in any event, they used the plug technique in a different house and the results were not very satisfactory. The carpet cleaner is prepared to try cleaning the carpet again but will not guarantee the results.

The carpets have not yet been replaced.

With respect to the cleaning the tenant described the cleaning she did. She acknowledged that she had not cleaned the window tracks or light fixtures.

The landlords filed their application for dispute resolution on December 13, 2013.

Analysis

Section 34(3) of the *Residential Tenancy Act* states that at the end of a tenancy the landlord must complete the move-out condition inspection report in accordance with the *Regulation*. Subsection (4) of the *Act* states that both the landlord and the tenant must sign the condition inspection report, and the landlord must give the tenant a copy in accordance with the *Regulation*. Section 18(1) of the *Residential Tenancy Regulation* states that the landlord must give a copy of the move-out condition inspection report within fifteen days of the later of the date the inspection is completed and the date the landlord receives the tenant's forwarding address in writing. In this case, the landlords

did provide the move-out condition inspection report to the tenants within the specified time.

Section 36 of the *Act* states that the right of a landlord to claim against a security deposit or pet damage deposit is extinguished if the landlord, having made an inspection with the tenant does not:

- complete the condition inspection report; and,
- give the tenant a copy within the required time.

The landlord's right to claim against the security deposit or pet damage deposit is not extinguished if the tenant does not sign the condition inspection report or is not offered an opportunity to note their disagreement with the landlord's comments.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

In a claim by a landlord for damage to property, the normal measure is the cost of repairs or replacement cost (less an allowance for depreciation), whichever is lesser. The Residential Tenancy Branch has developed a schedule for the expected life of fixtures and finishes in rental units. This depreciation schedule is published in *Residential Tenancy Branch Guideline 40: Useful Life of Building Elements* and is available on-line at the Residential Tenancy Branch web site.

The expected useful life of carpet in a rental unit is ten years. Accordingly, the landlord has no claim for the bedroom carpets. With respect to the living/dining room carpet the following three factors must be considered:

- Although the landlord could not say the age of the carpet it is clearly closer to ten years old than new.
- The unit has been rented in its current condition.
- The carpet has not been replaced.

Having regard to all three factors, but particularly the fact that the landlords were not able to establish that the carpets were less than ten years old, the claim for carpet replacement is dismissed.

The standard of cleaning to be applied to tenants is set out in Residential Tenancy Policy Guideline 1: Landlord & Tenant – Responsibility for Residential Premises. The

landlords' cleaning schedule reflects this standard. The tenants acknowledged that they had not done many of the items claimed by the landlords. Having considered all of the evidence I allow the landlords' claim for cleaning and light bulb replacement of \$358.00 in full.

While tenants are not responsible for small nail holes they are responsible for big holes. I allow the landlords' claim for drywall repairs in the amount of \$60.00.

I find that the landlords have established a total claim of \$418.00 for cleaning, repairs and light bulb replacement and I order that they may withhold this amount from the security deposit in full satisfaction of the claim. I find that the tenants are entitled to return of the balance of the security deposit and the pet damage deposit, a total of \$832.00, and pursuant to section 67 I grant the tenants a monetary order in that amount.

Both parties were partially successful on their respective applications. Each is entitled to reimbursement from the other party for the fee they paid to file their application. As these orders would cancel each other out, no order with respect to the filing fees will be made.

Conclusion

A monetary order in favour of the tenants in the amount of \$832.00 has been granted. If necessary, this order may be filed in the Small Claims Court and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 27, 2014

Residential Tenancy Branch

