



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BAYSIDE PROPERTY SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with a landlord's application to retain the security deposit and obtain a Monetary Order for cleaning and damage to the rental unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The landlord requested the claim be amended to exclude the claim for hydro. As the request reduces the claim against the tenants, I found the request non-prejudicial, and amended the application accordingly. I also amended the application to reflect the dispute code associate to a damage claim. Although the landlord did not indicate this dispute code, it was clear from the details of dispute that this application pertained to a damage claim.

Preliminary and Procedural Matters

Prior to the hearing, both parties had provided evidence and submissions with respect to their positions. During the hearing, the tenants' representatives made new arguments that the landlord had not anticipated. The landlord rebutted the new positions put forth by the tenants' representatives; however, I ordered the landlord to provide me with documentation to support the landlord's rebuttal. The landlord provided additional evidence after the hearing, as ordered, and I have considered it in making this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants for the amounts claimed?
2. Is the landlord authorized to retain the tenants' security deposit and pet damage deposit?

Background and Evidence

The tenancy commenced February 1, 2012 and ended December 31, 2013. The tenants paid a security deposit and a pet damage deposit totalling \$1,000.00. A move-in inspection report had been prepared. A move-out inspection was scheduled for December 29, 2013 and when the landlord attended the unit it was not sufficiently cleaned. The landlord gave the tenant more time to clean the unit and attempted to contact the tenant in the days that followed to re-schedule the move-out inspection; however, the tenant did not respond. The landlord then performed the move-out inspection without the tenants present on December 31, 2013. The landlord received the tenant's forwarding address on February 21, 2014 and on March 3, 2014 the landlord filed this Application for Dispute Resolution.

The landlord is seeking compensation of \$1,485.08 for carpet replacement that took place January 24, 2014. The landlord submitted that the carpeting had to be replaced as it was significantly stained and the tenant had communicated to the landlord that attempts to remove the stains were unsuccessful. The landlord submitted that the carpeting was last installed in January 2011. The landlord submitted photographs of the carpeting in the living area, the dining area, hallway, and bedroom that were taken just after the tenancy ended and the invoice for carpet replacement on January 24, 2014.

The landlord is also seeking \$100.00 for cleaning the rental unit. The landlord submitted photographs showing dirt and grime in the following places: the bathtub, on window sills, the side of the stove, inside the oven, under the range hood, and under the fridge and stove. The landlord submitted that the fridge and stove are on rollers and are easy to pull out. The landlord submitted that these areas were clean before the tenancy commenced as evidence by the move-in inspection report.

The tenants' representatives provided several positions in response to the landlord's claims which I have summarized below:

1. A more detailed move-out inspection was conducted in comparison to the move-in inspection. For example: the fridge and stove were not pulled out when the move-in inspection was conducted. Nor, were the stove top elements. As such, the dirt and grime present in the landlord's photographs may be from previous tenants.
2. Since unit was older the tenant overlooked and accepted some dirt and damage in the unit when participating in the move-in inspection and did not note it on move-in inspection report.

3. The tenants and their guests never wore shoes inside the rental unit.
4. The stains on the carpet are from previous water leaks and the tenants provided photographs of buckets placed beside the bedroom window to catch water drips.
5. The tenant did admit to a stain in the living room but the landlord's photographs show many more stains that are all of the same red colour; therefore, the landlord must have "photo-shopped" the photographs to make more red stains apparent.
6. The carpeting provided to the tenants was not very new and the landlord is trying to pay for a renovation at the tenants' expense.
7. The carpets were dirty and stained before the tenancy started. As a result, the tenant may have had the carpets cleaned herself during the tenancy.

The landlord provided the following responses to the submissions made by the tenants' representatives. The rental unit was clean before the tenancy commenced and the fridge and stove were pulled out at the time of the move-in inspection. The move-in inspection report was given to the female tenant to review and make any notations she felt were appropriate after walking through the unit and the female did make a notation on the report about a crack in the ceiling. The landlord acknowledged that there had been water leaks in the master bedroom but the landlord explained that the carpeting was dried and treated by a professional remediation company and not stained as a result. The landlord denied altering the photographs in any way and stated she barely knows how to use the computer let alone "photo-shop" images. Finally, the tenant may have had the carpets cleaned during the tenancy but that is not unusual, especially considering the tenants had two cats, and does not establish the carpets were dirty at the start of the tenancy.

I ordered the landlord to provide evidence as to carpet cleaning prior to the start of the tenancy and installation of the carpeting that was replaced. The landlord provided receipts for carpet cleaning that took place in November 2011 and flood restoration work in September 2013. In addition, the landlord provided copies of suite inspection reports including one done in July 2013 indicating there was a large stain on the carpet in the rental unit, among other things. The landlord submitted that the carpet installation invoice from January 2011 would take a significant amount of time to locate and requested my decision be made based upon the landlord's credibility.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the landlord's claims against the tenants.

Cleaning

Under the Act, a tenant is required to leave a rental unit reasonably clean. There is no exemption to this requirement and if there are issues with cleanliness at the start of the tenancy the tenant should raise those issues and seek remedy at that time. However, in this case, I reject the tenants' position that the unit was not clean at the start of the tenancy as the move-in inspection report indicates the rental unit was clean.

Upon review of the landlord's photographs, I find the rental unit was not left reasonably clean, especially in the kitchen. I also find the landlord's claim for compensation of \$100.00 to be reasonable. Therefore, I grant the landlord's request to recover \$100.00 from the tenants for cleaning.

Carpet damage

Under the Act, a tenant is required to repair damage they, or persons they permit in the rental unit, cause by way of their actions or neglect. A tenant is also responsible for any damage their pet may cause. Where a tenant is responsible for damage, a landlord may recover the associated loss from the tenant.

I accept the landlord's position that the carpeting was not stained at the start of the tenancy as the landlord provided a receipt for carpet cleaning three months prior to the tenancy starting and the move-in inspection report includes no notation that the carpeting was stained.

I accept the landlord's photographs and the tenant's admission that she stained the carpeting in the living area in finding the carpeting was badly stained at the end of the tenancy. I reject the tenants' representatives' suggestion that the photographs must have been altered as a far-reaching theory that is unsupported. While it was undisputed that there had been water leaks in the bedroom during the tenancy, the tenants' photographs do not depict any staining or damage to the carpeting and the landlord has evidence that a professional restoration company took appropriate measures to treat the wet carpeting. Therefore, I accept that the carpeting required replacement to address the stains caused by the tenants during their tenancy and they are responsible for compensating the landlord for the associated loss.

I find the issue to determine is the landlord's loss that is recoverable from the tenants. As awards for damages and loss are intended to be restorative, where an item has a limited useful life, it is appropriate to reduce the replacement cost by the depreciation of the original item. In the case before me, I find it appropriate to reduce the landlord's claim for carpet damage by 1/3 to take into account depreciation of the replaced

carpeting, based upon an average useful life of 10 years. Therefore, I award the landlord \$990.00 for carpet damage [calculated as \$1,485.08 x 2/3, rounded].

Filing fee, deposits and Monetary Order

As the landlord was largely successful in this application, I award the landlord recovery of the \$50.00 filing fee.

I authorize the landlord to retain the tenants' security deposit and pet damage deposit in partial satisfaction of the amounts awarded to the landlord and I provide the landlord with a Monetary Order for the balance calculated as follows:

Award for cleaning	\$ 100.00
Award for carpet damage	990.00
Filing fee	50.00
Total award to landlord	\$1,140.00
Less: security deposit and pet damage deposit	<u>(1,000.00)</u>
Monetary Order	\$ 140.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenants' deposits and has been provided a Monetary Order for the balance of \$140.00 to serve and enforce.

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: July 05, 2014

Residential Tenancy Branch

