



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for damages to the unit, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee from the tenants.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2014. Rent in the amount of \$1,330.00 was payable on the first of each month. The tenants paid a security deposit of \$650.00. The tenancy ended on September 30, 2016.

The parties agreed a move-in and move-out condition inspection report was completed.

The landlord claims as follows:

a.	Carpet replacement (prorated)	\$1,614.21
b.	Filing fee	\$ 100.00
	Total claimed	\$1,714.21

The landlord's agent testified that their staff did not properly complete the move-out condition inspection and when they discovered this error they contacted the tenants to have them come back to the rental unit to complete the inspection properly; however, they did not attend.

The landlord's agent testified that the tenants had the carpet cleaned on September 30, 2016 and when their staff attended to complete the move-out condition inspection the carpet was wet and you could not see the stains; however, when the carpets dried they were still stained and dirty.

The landlord's agent testified that the carpet cleaning company informed them by email of the issues they had with the carpets at the time of cleaning and that they were unable to remove the stains. Filed in evidence is a copy of the email to the landlord from the carpet cleaning company.

The landlord's agent testified that they were informed of the cockroaches in late August 2016, and had the unit treated; however, it was discovered after the tenants vacated that the carpets were infested with bedbugs. The agent stated the infestation was so bad that they were informed by the pest control company that it better to remove the carpets, so they can properly address the large infestation. Filed in evidence is a letter from the pest control company.

The landlord's agent testified that they could not have discover the infestation of bugs at the move-out condition inspection since the carpets were wet and the bedbug were hiding in the baseboards and not easily detected in any event.

The tenants testified that they did get a call from the landlord's agent that there had been a mistake when completing the move-out inspection. The tenants stated that the landlords cannot expect them to come back due to their error, and they completed the form and it was signed.

The tenants testified that if the landlords had any concerns about the rental unit it should have been dealt with at the inspection. The tenants stated they were no bedbug in the rental unit when they left. The tenants stated they had cockroaches which the landlord was treating.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 21 of the Act States a condition inspection report completed in accordance with this section 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.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

In this case, the carpets appeared clean at the move-out condition inspection; however, the carpets were wet at the time. I find it not unreasonable that as the carpets dried that any deep staining would rise to the surface.

Further, I find it is not unreasonable for a person who does not live in the premises to miss an infestation of bedbugs at the move-out condition inspection, as the bugs are small and in this case the carpets were wet and the bugs likely hide in the baseboards.

On September 9, 2016, the pest control company attended the rental unit to provide a treatment for cockroaches, which was reported by the tenants at or near the time they gave notice to end their tenancy, bait stations were setup to monitor the activity. On October 4, 2016, the pest control company attended for a follow up inspection of the original treatment for cockroaches, at this time the unit was empty and it was at this time they discover the rental unit was highly infested for bedbugs and cockroaches.

The work order filed as evidence stated that the tenants' unit had cockroaches and a high level of bedbug activity. One connecting unit was treated along the connecting wall as the pest control company saw one cockroach, and no bedbugs were detected. The other connecting units identified in the work order had no detection for bedbugs or cockroaches.

I am satisfied that the bedbugs and cockroaches infestation started in the tenants unit as the evidence supports that they were contained primarily to this unit. I do not accept the tenants' evidence that they were no bedbugs as the evidence supports otherwise.

While I am not able to determine how the infestation started as both bugs can hide and travel in almost anything; however, I am satisfied that it went unreported by the tenants for an extended period of time as the carpets were highly infested with these bugs, which required the carpets to be replaced. I find the tenants actions neglectful and as a result of that neglect the landlord suffered a loss.

I am satisfied that the landlord has provided a preponderance amount of evidence to the contrary that the move-out condition inspection was wrong. The carpet was wet at the time and it would be impossible to see the hidden stains. Further, I am satisfied that the move out condition inspection was not designed to look for bugs and could easily be missed, such in this case.

Based on the above, I find the landlord is entitled to recover the depreciated value of the carpet as claimed in the amount of **\$1,614.21**.

I find that the landlord has established a total monetary claim of **\$1,714.21** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$650.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,064.42**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants

The tenants are cautioned that if they have moved their furniture and belongings into a new rental unit without have them treated, they could be found responsible for the cost of treatment, as it would be neglectful an irresponsible to do so. I recommend that the tenants inform their new landlord that these bugs may have been transported through their belongings as that would be responsible thing to do to avoid another infestation.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: May 08, 2017

Residential Tenancy Branch