Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This decision pertains to the Landlords' application for dispute resolution made on May 9, 2018, under the *Residential Tenancy Act* (the "Act"). The Landlords seek a monetary order for damage caused by the Tenants, and, for a monetary order for the filing fee.

The Landlord (Z.H.) and the Tenants attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Landlord testified that they served the Notice of Dispute Resolution Proceeding package (the "package") on both Tenants by registered mail on May 13, 2018, and that it was received by Tenant A.H. on May 16 and by Tenant S.V. on May 25. The Landlord testified that they received a one-page document from the Tenants on June 21, 2018, and while this was submitted less than 14 days before the hearing as required by the *Rules of Procedures,* the Landlord indicated that they had reviewed the document and were prepared to proceed.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

Issues

1. Are the Landlords entitled to a monetary order for damage caused by the Tenants?
2. Are the Landlords entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The Landlord testified that the tenancy began March 31, 2017 and ended April 30, 2018. Rent was $1,695.00, due on the first of the month, and the Tenants paid a security deposit of $847.50.

The Landlord and Tenants conducted a move-in condition inspection at the start of the tenancy and conducted a move-out condition inspection at the end of the tenancy on April 30, 2018. The Tenants did not attend the move-out condition inspection but appointed an agent to attend.

The Condition Inspection Report (the "Report") indicated various damages (broken coat hook and wall repair) that the agent agreed with. The agent was in communication with the Tenants, and the Tenants agreed to the Landlord withholding $139.00 to compensate for the broken coat hook and wall repair. The Report, submitted into evidence, reflects this agreement between the parties. The Tenants confirmed that these damages and the retention of $139.00 were not in dispute.

The Report also notes a "Burn hole in 3 yr old carpet." The agent wrote that they "do not agree to the carpet charge of $423.36 (on behalf of the tenants)". The Landlords submitted into evidence four photographs depicting two burn holes in the carpet in one of the bedrooms of the rental unit. The Landlord testified that the size of one hole is between the size of a quarter and a loonie and the second hole is between the size of a nickel and a quarter.

The Landlords and Tenants agree that there are two burn holes in the carpet, and that the Tenants caused the burn holes. However, the Landlords submit that replacing the carpet is the appropriate solution, while the Tenants submit that a carpet patch repair is the appropriate solution to the burn holes.

The Landlords submitted that merely replacing the two burn holes with patches will not solve the problem because there will be a difference in colouration between the patches and the surrounding carpet. The Landlord obtained three different estimates and assessments of a potential patching, all three assessments were that the patching would be noticeable due to the difference in colour, and because a minimum patch would be 3 inches x 3 inches. The burn holes were on carpet located below a west-facing window, so they would be immediately noticeable to anyone (such as a prospective tenant) entering the room.
The carpet and the underlay were 3 years old at the time of the move-out inspection.

The Landlord obtained carpet replacement quotes from five difference companies, which included installation and taxes but excluding the underlay. Replacement costs varied between $583.59 and $850.00. By the time of this hearing, the Landlord had since replaced the carpet with new carpet, that they purchased from the same supplier as before. The quotation (and final cost) of the new carpet was $617.40, which the Landlord reduced 30% “for depreciation” to $432.18.

Tenant S.V. testified that they obtained estimates and assessments from two carpet suppliers who advised them that a patch would be “mostly unnoticeable.” The Tenants submitted into evidence a copy of a document that contained two quotes at $275.00 and $189.00 (excluding taxes).

The Tenants submitted that the Landlords only gave them one opportunity to do a condition inspection, that being April 30, 2018, and did not offer the Tenants at least two opportunities as required by section 23 (1) of the Act. The Landlord countered that the Tenants wanted to initially conduct an inspection late at night, around 10 p.m. on Sunday, April 29, 2018. However, the Landlords have small children and conducting an inspection at that hour was unfeasible.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I turn first to the issue raised by the Tenants regarding the Landlords not offering two opportunities for a condition inspection. The ability of the Landlords to retain some or all of the security deposit in satisfaction of their claim will turn on this.

Section 35 (2) of the Act states that the “landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.” Section 17 of the *Residential Tenancy Regulation* (the “Regulation”) provides clarification on this matter:

> 17 (1) A landlord must offer to a tenant a first opportunity to schedule the condition inspection by proposing one or more dates and times.
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> (2) If the tenant is not available at a time offered under subsection (1),

> (a) the tenant may propose an alternative time to the landlord, who must consider this time prior to acting under paragraph (b), and
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> (b) the landlord must propose a second opportunity, different from the opportunity described in subsection (1), to the tenant by providing the tenant with a notice in the approved form.

Section 16 (2) of the Regulation states that a "condition inspection must be scheduled and conducted between 8 a.m. and 9 p.m., unless the parties agree on a different time."

In this case, the initial proposal by the Tenants for a 10 p.m. condition inspection does not meet section 16 (2) requirements. I consider the Landlords' proposal to conduct the condition inspection at 1:00 p.m. on April 30, 2018, to be the "first opportunity" as contemplated by section 17 (1) of the Regulation. The Tenants agreed to this date and time, and appointed an agent to act on their behalf to attend the condition inspection, as permitted by section 15 of the Regulation. Taking into consideration the parties' submissions on this matter, and applying the law to the facts, I find that the Landlords have complied with section 35 (2) of the Act and as such, did not extinguish their right to claim against the deposits.

The Landlords are making a claim for compensation for carpet damage caused by the Tenants. Section 67 of the Act empowers me to determine the amount of, and order that a party pay, compensation to another party, if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement.

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due, and to establish the value of the loss or damage. In determining whether compensation is due, an arbitrator must determine the following:

1. Has a party to the tenancy agreement failed to comply with the Act, regulation or the tenancy agreement?
2. Did the loss or damage result from this non-compliance?
3. Has the party who suffered the damage or loss proven the amount of, or value of, the damage or loss?
4. Has the party who suffered the damage or loss acted reasonably to minimize that damage or loss?

Section 32 (3) of the Act requires that a tenant repair damage to the rental unit that is caused by the actions or neglect of the tenant. The Tenants testified and acknowledged that they caused the burns in the carpet. As such, I find that the Tenants failed to comply with the Act to repair the damage and that the Landlords' loss or damage to the carpet has resulted from the Tenants' non-compliance.

The Landlords submitted five quotes and testified that the carpet was replaced at a cost of $432.18. This amount represents the Landlord's absorbing 30% for deprecation, which is consistent with *Residential Tenancy Policy Guideline 40 "Useful Life of Building Elements,"* which references carpets as having a 10-year useful life. Based on the quotes, and based on the depreciation absorbed by the Landlords, I find that the amount claimed is reasonable. Further, the Landlords acted reasonably to minimize the damage by obtaining quotes within days of the Tenants leaving, and by installing the new carpet on May 16, 2018.

The Tenants argued that the less expensive carpet patching was appropriate, but admitted that the carpet companies advised that such patches were "*mostly* unnoticeable" (my emphasis added). The Landlord likewise testified that there would be discolouration and that this would become more pronounced given the well-lit location of the holes (or, patches) under the window. Given that 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, it follows that replacing the carpet is a reasonable solution.

Taking into consideration all the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the Landlords have met the onus of proving their claim for compensation for damage to the carpet. For the reasons set out above, I find that the Landlords are entitled to a monetary award for damage in the amount of $432.18 for the carpet damage. In addition, the Tenants did not dispute the Landlords retaining $139.00 of the security deposit for damage to the broken wall hooks and wall repair.

As the Landlords were successful in their application I grant them a monetary award for $100.00 for recovery of the filing fee.

The Landlords are thus granted a total monetary award of $671.18 ($432.18 + $139.00 + $100.00 = $671.18). I order that $671.18 of the security deposit held be applied to the award granted to the Landlords, pursuant to section 72 of the Act.

The Tenants are granted a monetary order in the amount of $176.32, representing the balance of their security deposit due.

Conclusion

The Landlords are granted a total monetary award in the amount of $671.18. I order that $671.18 of the security deposit held be applied to the award granted to the Landlords, pursuant to section 72 of the Act.

The Tenants are granted a monetary order in the amount of $176.32 representing the balance of their security deposit due. The monetary order must be served on the Landlords and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1 (1) of the Act.

Dated: June 28, 2018

Residential Tenancy Branch