



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL, MNSD-DR, FFT

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on September 12, 2022 for:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on September 15, 2022 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy started on August 15, 2019 and ended on August 15, 2021. Rent of \$2,700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$2,900.00 as a security deposit. The Tenant sent their forwarding address to the Landlord by registered mail on August 25, 2021 and the Landlord received that mail. No move-in or move-out inspection report was completed. The unit included two nightstands and at the end of the tenancy a person cleaning the unit for the Tenant threw the stands out.

The Landlord claims \$302.00 as the cost to replace the stands. The Landlord states that the unit has been rented and that the stands have not been replaced. The Landlord provides an estimate for the cost of the stands. The Landlord states that they do not know the age of the stands and that the unit used to belong to a friend of the Landlord. The Tenant states that the same brand stands can be found for less than the Landlord's estimate. The Tenant provides online searched costs.

The Landlord states that the Tenant left the carpet damaged with stains and claims the removal and replacement costs of \$2,883.72. The Landlord provides an estimate and states that the carpets have not been removed for replacement. The Landlord states that another tenancy started and that no reduction in rent or a promise to replace the carpet was given for that tenancy. The Landlord states that while the carpet is original to the building built in 2008 no persons have occupied the unit until 5 years ago when it was first rented. The Tenant agrees that they stained the carpet and states that the carpet was professionally cleaned twice without the stains being fully removed. The Tenant states that the carpet was 11 years old at the start of the tenancy and argues that the carpet is well beyond its useful life as indicated in the Residential Tenancy Branch (the "RTB") Policy Guideline #40.

Analysis

Section 23 of the Act provides, inter alia, that the landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day, that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection, and that the landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act provides that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

- (a) does not comply with section 23 (3) [*2 opportunities for inspection*],
- (b) having complied with section 23 (3), does not participate on either occasion, or
- (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Based on the undisputed facts that no move-in inspection report was completed I find that the Landlord's right to claim against the security deposit for damage to the unit was extinguished at move-in.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Policy Guideline #17 provides the following:

Return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act.

As the Landlord's right to claim against the deposit for damage to the unit has been extinguished, as the Landlord has claimed against the security deposit for damages to the rental unit and as the Landlord did not return the security deposit to the Tenant within 15 days receipt of the Tenant's forwarding address I find that the Landlord must

now pay the Tenant double the security deposit collected including zero interest of **\$5,800.00** (\$2,900.00 x 2).

I refer the Landlord to section 19(1) of the Act, which provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. I caution the Landlord to comply with the Act with any current or future tenancies in the collection of a security deposit and to refrain from collecting a greater security deposit than allowed. For the Landlord's further information, I refer the Landlord to section 19(2) of the Act which provides that if a landlord accepts a security deposit or a pet damage deposit that is greater than the amount permitted under subsection (1), the tenant may deduct the overpayment from rent or otherwise recover the overpayment.

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. It is undisputed that the stands were not new to the tenancy even though the age is unknown. For this reason and based on the Landlord's evidence that the used stands have not been replaced, I consider that the Landlord has not substantiated the costs being claimed. However, given the Tenant's evidence that the Tenant caused the used stands to be removed I find that the Landlord is entitled to a nominal amount of **\$50.00** for this loss.

The Landlord provided no photos and no inspection report on the condition of the unit at move-out. Given the Tenant's video and supported evidence of the carpets being cleaned at the end of the tenancy I consider that the Landlord has not sufficiently

supported that the carpets were so damaged that they required replacement. Further the Landlord gives no evidence of the carpet being less than 11 years old at the start of the tenancy. Although the carpet may have been lightly used at the onset of the tenancy, there is no evidence that the Landlord suffered any rental loss or incurred any costs from the stains that were left on the carpet. For these reasons I find that the Landlord is not entitled to the costs claimed for the replacement of the carpets and I dismiss the claim for \$2,883.72.

As the Landlord's claims have met with very little success and as the Landlord breached the Act during the tenancy by collecting and holding more of a security amount than allowed, I decline to award the Landlord recovery of the filing fee. Deducting the Landlord's entitlement of **\$50.00** from the **\$5,800.00** owed to the Tenant leaves **\$5,750.00** to be paid to the Tenant forthwith.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$5,750.00**. 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 Act.

Dated: April 27, 2022

Residential Tenancy Branch