



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Dispute Codes:

MND, MNDC, MNSD, FF

Introduction

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for damage to the rental unit; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on November 01, 2005 and ended on July 01, 2008. The parties agree that they had a written tenancy agreement that required the Tenants to pay monthly rent of \$1,500.00. The parties agree that the Tenants paid a security deposit of \$750.00 on November 01, 2005.

The Landlord and the Tenants agree that a Condition Inspection Report was completed at the beginning of this tenancy. A copy of the Condition Inspection Report was submitted by the Tenants.

The Landlord is seeking compensation for removing garbage and vegetation from the exterior of the property. The Landlord submitted photographs of the horse paddock and surrounding area that demonstrates that there was no uncontrolled vegetation or debris in that vicinity at the beginning of the tenancy.

The Tenants agree that the horse paddock was in good condition at the beginning of the tenancy, due to the fact that animals were living in the paddock. The male tenant stated that other debris was left on the property, such as a derelict car, a pile of hay, a pile of construction debris, dog toys, and several garbage containers full of garbage.

The male Landlord agreed that a car that was suitable for parts, a small amount of hay, and garbage containers were on the property at the beginning of the tenancy. He stated that there were no dog toys strewn about the property and he is not sure if there was construction material on the property at the beginning of the tenancy.

The Landlord and the Tenants agree that a bank appraisal, dated July 20, 2005, described the overall maintenance of the property as "very good", and that the property was reported to be well landscaped.

The Landlord stated that the grass in the paddock was very high at the end of the tenancy and that there were many dog toys strewn throughout the yard. He stated that they had to remove many layers of vegetation from the paddock and that he had to dispose of three loads of rubbish from various areas of the yard.

The male Tenant agreed that the grass in the paddock had grown during their tenancy, as they did not keep animals in that area. He stated that all of the garbage in the yard was there at the beginning of the tenancy. He stated that the rental property is a large treed area in a rural setting, and they did not object to the condition of the property at the beginning of the tenancy. He stated that the property is a working hobby farm, although the Tenants did not keep animals on the property other than pets.

The Landlord submitted photographs that depict the paddock at the end of the tenancy. These photographs demonstrate there is some long grass in the paddock and surrounding areas, but there is no evidence of garbage in the photographs.

The Landlord is seeking compensation for repairing the chicken coop. The Landlord stated that the chicken coop was in good condition at the beginning of the tenancy. The Landlord stated that the interior of the chicken coop had been completely altered during this tenancy. He stated the Tenant had removed the ramp, the nests, the floors, and the side door, and that the front door of the chicken coop was in disrepair. The Landlord submitted a photograph that shows the front door of the chicken coop had partially fallen off, but he submitted no photographs that depict the condition of the interior of the chicken coop at the end of the tenancy.

The male Tenant stated that he never used the chicken coop during the tenancy. He stated that the front door of the chicken coop was always shut, so he assumed it was properly hinged. He stated that he did not damage or alter the interior of the chicken coop in any way. He submitted a photograph of the coop, which was reportedly taken during the summer of 2008, which shows that the door of the coop is properly closed.

The Landlord is seeking compensation for pumping the septic tank, which he contends was necessary because the Tenants disposed of soap scum, grease and garbage into the septic field. The Landlord submitted no evidence to corroborate his statement that the pumping was necessary because of the actions of the Tenants.

The male Tenant stated that there was an on-going issue with slow drainage throughout the tenancy. The Tenants submitted a receipt, dated January 19, 2007, which indicates that the toilet had been professionally augured. The male Tenant stated that the plumber who augured the toilet advised him that roots may be clogging the septic field.

The Landlord is seeking compensation for the deductible that he is paying to his insurance company for replacing the carpets on the main floor and in two upper bedrooms. The Landlord stated that the carpets were 2 years old at the beginning of the tenancy. He submitted a receipt that shows they were professionally cleaned at the beginning of the tenancy, on which there is a notation that the carpets were all "badly soiled".

The Landlord stated that the carpets were stained, ripped, and "smelly" at the end of the tenancy. He submitted an estimate from Raemar Restorations Ltd., which indicates that the carpets must be replaced as they "are not cleanable". The Landlord did not submit photographs that depict the condition of the carpets at the end of the tenancy.

The Tenants submitted a Condition Inspection Report, which was completed at the beginning of the tenancy, on which the Landlord noted the carpets were stained and had an odour. The male Tenant stated that the carpets were damaged at the seams and had been clawed by a cat, although there is no evidence of this on the Condition Inspection Report. He argued that the carpets were in such poor condition at the beginning of the tenancy that it is likely Raemar Restorations Ltd. would have concluded that the carpets were not cleanable at the beginning of the tenancy, if they had viewed them at that time.

The male Tenant stated that the roof leaked throughout the tenancy, which was responsible for some of the stains on the carpet. The Landlord agreed that the roof leaked during the tenancy, although he describes the leak as "small drips".

The Landlord is seeking compensation, in the amount of \$67.00, for the cost of replacing two smoke alarms. The Landlord and the Tenants agree that there were two smoke alarms in the rental unit at the beginning of the tenancy, albeit they were not installed. The Landlord stated that neither of the smoke alarms was in the rental unit at the end of the tenancy. The male Tenant stated that he does not know if these items were left in the rental unit at the end of the tenancy, and he authorized the Landlord to deduct \$67.00 from the security deposit in compensation for the missing alarms.

Analysis

The Landlord and the Tenants agree that the paddock became overgrown during this tenancy. I find that the Landlord is not entitled to compensation for cutting the

vegetation in the paddock because I find it to be reasonable wear and tear, for which the Tenants are not liable. In reaching this conclusion, I was strongly influenced by the fact that this is a rural property, the majority of which is not landscaped. Although I do accept that the paddock became overgrown during this tenancy, I find that this would be expected, since the Tenants did not intend to keep farm animals in the paddock and that the tenancy lasted over 2.5 years. I was also influenced by the fact that there was no evidence that the Tenants agreed to maintain the paddock or that the overgrowth vegetation in the paddock caused significant damage.

After hearing the contradictory evidence of both parties, I find that the Landlord has submitted insufficient evidence to establish that the Tenants left garbage on the property that needed to be removed at the end of the tenancy. In circumstances where two parties disagree on a material fact, the onus is on the person making the claim for damages to show that the other party is liable for the damages. In these circumstances, the Landlord submitted no photographs or other similar evidence that show the Tenants left garbage on the property at the end of the tenancy. Therefore, I dismiss the Landlord's application for compensation for removing garbage from the residential property.

After hearing the contradictory evidence of both parties, I find that the Landlord has submitted insufficient evidence to establish that the Tenants damaged the chicken coop. In reaching this conclusion I was strongly influenced by the lack of photographs or other similar evidence that corroborates the Landlords claim that the interior of the chicken coop was in good condition at the beginning of the tenancy. In the absence of evidence that shows the interior of the coop was in good condition at the beginning of the tenancy, I can not conclude that the interior was damaged during this tenancy. On this basis, I dismiss the Landlord's application for compensation for damages to the interior of the chicken coop.

I accept that the door to the chicken coop came unhinged during this tenancy, however I can not conclude that it came unhinged due to the negligence of the Tenant. I find that the Landlord is not entitled to compensation for repairing the door, as this damage constitutes reasonable wear and tear. In reaching this conclusion, I was influenced by the fact that the chicken coop is an older structure and it is not unreasonable to expect that door hinges would malfunction over time. I was also influenced by the fact that a broken hinge is a relatively insignificant matter. On this basis, I dismiss the Landlords claim for repairing the door to the chicken coop.

After hearing the contradictory evidence of both parties, I find that the Landlord has submitted insufficient evidence to establish that the septic field was clogged due to the actions of the Tenants. In reaching this conclusion, I was strongly influenced by the lack of evidence that corroborates the Landlord's testimony, who is the party that bears the burden of proving that the septic field was damaged by the Tenants. I therefore dismiss the Landlord's claim for pumping the septic field.

After hearing the contradictory evidence of both parties, I find that the Landlord has submitted insufficient evidence to establish that the Tenants were responsible for the stains on the carpet. In reaching this conclusion, I was strongly influenced by the notation on the Condition Inspection Report that was completed at the beginning of the tenancy, which noted that the carpet had stains and an odour. I was also strongly influenced by the notation on the receipt from the carpet cleaner who cleaned the carpets at the beginning of the tenancy, which indicates the carpets were badly stained at the beginning of the tenancy. I find that the carpets were in poor condition at the beginning of the tenancy, and I find that the Landlord has failed to establish that the carpets were in significantly worse condition at the end of the tenancy. Although the representative from Raemar Restorations Ltd. establishes that the carpets can not be cleaned, I accept the Tenant's argument that the representative may have reached the same conclusion if he had viewed them at the beginning of the tenancy. On this basis, I dismiss the Landlord's claim for compensation for replacing the carpets.

Based on the verbal consent expressed by the male Tenant, I find that the Landlord is entitled to compensation, in the amount of \$67.00, for the cost of replacing two smoke detectors, and that the Landlord can retain this amount from the security deposit paid by the Tenants.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$67.00. I hereby authorize the Landlord to retain \$67.00 from the security deposit paid by the Tenants. I find that the Landlord must return the remainder of the Tenant's security deposit, in the amount of \$683.00 plus \$23.59 in interest on the original security deposit, for a total of \$706.59.

I find that the Landlord would likely have been able to obtain compensation for the missing smoke detectors without filing an Application for Dispute Resolution. I find that he not demonstrated the merit of the remainder of his claims and I therefore dismiss his application to recover the cost of filing this Application for Dispute Resolution.

Date of Decision: October 08, 2008