

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order. Both parties participated in the conference call hearing.

One photograph submitted by the landlord, a picture of the house as it appeared in the early 90's, had not been provided to the tenants and was not considered in my deliberations.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on August 15, 2004. The tenant M.F. vacated the rental unit in January 2009, the tenant J.D. vacated the rental unit in March 2009 and the tenant J.G. vacated the rental unit in October 2009. No condition inspection of the rental unit was performed at the beginning of the tenancy. At the time the tenant J.G. vacated the unit, he and the landlord completed a condition inspection and generated a report. The report indicates three problems: (1) An unsatisfactory replacement of an exterior lighting fixture; (2) a pile of twigs which was not removed from the yard; and (3) trees not having been trimmed. The rental unit is a single family dwelling with a yard in which there are a number of trees and shrubs. A written tenancy agreement exists which contains the following provisions:

The tenant agrees to maintain the property in a clean and tidy condition ... Grass to be kept cut, and any garden area or flower beds to be kept to a reasonable standard, with weeds under control. No painting or decorating without the landlords approval. All such expenses to be the responsibility of the tenant. The tenant should inform the owner of items that require attention and repair.

The landlord took the position that the above provisions required the tenants to trim and prune trees and shrubbery and to remove such trimmings. The landlord testified that the tenants left a large pile of debris in the back yard which included branches, tree limbs and grass clippings. Both parties provided photographs of the debris. The tenants took the position that they were required only to maintain the lawn and garden and were not required to trim trees or shrubbery, nor were they required to dispose of trimmings from trees and shrubbery. The tenants submitted that many of the limbs and branches were deadwood which had fallen from the trees. The tenants produced a witness, C.Y., who was a tenant in the rental unit for the 10 years immediately prior to their tenancy. C.Y. testified that during her tenancy she asked the landlord to remove dead branches from a willow tree as they were concerned that the branches would fall, but the landlord declined to remove the branches. The landlord denied having been asked by C.Y. to remove dead branches during her tenancy.

The landlord testified that at the beginning of the tenancy a storage shed on the property was empty, but that at the end of the tenancy there were a number of items in the shed which had been abandoned by the tenants and which had to be removed. The tenants testified that the storage shed held a number of items at the time the tenancy began and that they had moved items which had been left in the basement of the rental unit to the storage shed during the tenancy. Both parties agreed that a door in the storage shed had come from the rental unit and that the tenants had replaced the door during the tenancy with the landlord's permission after the unit had been broken into. The landlord denied that any items were in the basement of the unit at the beginning of the tenancy. C.Y. testified that when she ended her tenancy, there were a number of items in the basement, including wood and paint cans. The landlord also testified that the tenants left in the backyard a pile of lumber from wooden furniture they had dismantled and that she incurred cost in its removal. The tenants noted that the landlord had made no note on the condition inspection report of the items left in the shed or of the lumber in the back yard. The landlord paid a total of \$972.50 to remove the debris and lumber from the yard and the items from the shed and she seeks to recover this cost.

The landlord testified that during the tenancy the tenants removed a mature tree from the yard without her permission. I use the term “tree” in accordance with the terminology used by the parties, but note that the tree in question had the shape and appearance of a shrub and was leafy with multiple stems. The tenants testified that they removed the tree because it was dead, and provided a photograph of the tree. The landlord obtained an estimate of \$1,974.00 to replace the tree with a pyramid cedar, which is a hedge-type tree with a conical shape and seeks to recover roughly one half of the cost of replacing the tree.

The landlord testified that as a result of the tenants’ failure to prune the trees during the tenancy, she would incur an estimated cost of \$2,016.00, of which she seeks to recover roughly one half.

The landlord testified that she provided the tenants with a lawnmower at the beginning of the tenancy and that they left the lawnmower outside exposed to the elements, which resulted in it rusting and ceasing to operate. The landlord testified that at the beginning of the tenancy the lawnmower was “not that old.” The landlord incurred a \$75.00 charge to have the state of the lawnmower assessed and a report written and seeks to recover this cost as well as one half of the estimated \$400.00 replacement cost. The tenants testified that the lawnmower did not function effectively and that within the first year they advised the landlord that the mower was not working. The landlord denied having been so advised. The tenants used another lawnmower throughout the tenancy. C.Y. testified that she used the lawnmower in question throughout her 10 year tenancy.

The landlord testified that a light fixture on the front porch was removed by the tenants during the tenancy and had to be replaced at a cost of \$33.59. The tenants testified that the fixture was old and rusted and that it fell during the tenancy. The tenants placed the fixture on a shelf in the rental unit and left it there at the end of the tenancy. The tenants provided a photograph of the fixture. The landlord acknowledged that that the fixture was rusted but argued that it could not have fallen during the tenancy as it was securely attached.

The landlord testified that the door to the shed was left open, exposing the lock on the door to the elements, rendering it inoperable. The tenants testified that the shed roof had no overhang and therefore minimal protection was provided to the door in any event. The landlord was unsure of how old the lock was and claims \$10.00 for its replacement.

The landlord testified that the tenants painted several rooms in the rental unit without her permission. Although at the end of the tenancy the tenants had attempted to repaint some of the rooms back to their original white, the dark colours bled through and the rooms had to be repainted again. The landlord testified that some rooms required several coats of paint in order to effectively cover the dark colours. The landlord further testified that in a basement room the tenants had painted over the wooden closet doors and baseboards in black, which took considerable effort to cover. The landlord offered evidence showing that she spent \$1,296.00 to repaint the unit which she seeks to recover from the tenants. The tenants testified that the landlord verbally gave permission for them to repaint the bedrooms in the unit and that they specifically sought that permission prior to painting. The tenants did not claim to have received permission to paint the closet and baseboards in the basement room black, but testified that the landlord had seen the room a number of times during the tenancy and had not objected.

The landlord testified that the tenants drilled several holes in the basement floor without her permission. The tenants did not dispute having drilled the holes. The landlord seeks to recover \$50.00 as the cost of labour to fill the holes.

The landlord seeks to recover the \$50.00 filing fee paid to bring her application as well as the cost of developing photographs which were required for evidence.

Analysis

First addressing the significance of the condition inspection report, the purpose of the report is to give the parties an opportunity to note the condition of the rental unit at the time the report is generated. Where there is a clear contradiction between the report and the testimony of one of the parties, this may provide reason to question the

testimony. However, in this case I find that the report does not directly contradict any of the claims of the landlord. While ideally the report will be comprehensive, there are frequently issues which are overlooked during an inspection or which do not come to light until after the report has been completed. In such a situation, it is common for a landlord to bring a claim for such issues. I do not consider the fact that items were not noted on the report to pose a bar to the landlord's claim.

Residential Tenancy Policy Guideline #1 identifies the responsibility for maintenance of a rental unit. On page 1-7 of this guideline the policy with respect to property maintenance states as follows: "Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass and clearing snow ... The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control." As there is no specific term in the tenancy agreement requiring the tenants to maintain and prune trees, I find that the tenants were not responsible to do so. The landlord's claim for the cost of pruning trees is therefore dismissed.

I find that the bulk of the debris which had to be removed from the back yard was branches which either fell from the trees or were removed. I find that the tenants had no obligation to dispose of those branches. I find that the tenants left lumber in the back yard which the landlord had to dispose of and I find that the landlord is entitled to recover the cost of the removal of that lumber. I find that the landlord has not proven that most of the items in the shed belonged to the tenants. I do not accept the landlord's testimony that the shed was empty at the outset of the tenancy, in light of the testimony of C.Y. who stated that there were items in both the shed and the basement, which directly contradicted the landlord's testimony. The tenants acknowledged that they left a gas can in the shed and I find that this is the only item which the tenants were responsible to remove. However, I find that the cost of removing that gas can is so insignificant that it cannot attract compensation. The landlord presented two invoices for the removal of the items from the back yard and shed. The invoice for \$577.50 identifies only branch removal as the work performed and I find that the landlord must bear the entire cost of the branch removal. The second invoice for \$395.00 identifies

the work performed as “remove branches, tree stumps, cutup lumber and everything from shed.” Having viewed the photographs, I do not find the pile of lumber to be significant and I find that the tenants should be held responsible for 15% or \$59.25 of this invoice which I find will adequately compensate the landlord for the removal of the lumber. As the photographs do not show grass clippings and the invoices do not identify removal of grass clippings, I find that no award for removal of grass clippings is warranted. I award the landlord \$59.25.

I find that the tenants removed a tree from the yard without the landlord's permission. The photograph provided by the tenants shows a tree which does not appear to be in good health, but by no means appears to be dead and I find that the tenants wrongfully removed the tree. The landlord did not dispute that the photograph provided by the tenants showed the tree in question and it is clearly not a pyramid cedar, which is the subject of the estimate provided by the landlord. In the absence of an accurate estimate of the cost of the tree which was removed and considering that the tree was not healthy, I find that \$100.00 will adequately compensate the landlord for the tree and I award the landlord that sum.

I find that the lawnmower was at least 10 years old if not older at the time the tenancy began. I find that the lawnmower had outlived its useful life by the end of the tenancy and had no actual value and accordingly I dismiss the landlord's claim for the cost of its replacement as well as the cost of preparing the report itemizing the condition of the mower.

There was no dispute between the parties that the photograph of the light fixture provided by the tenants was the light fixture at issue. The fixture was clearly extremely aged and weathered and had outlived its useful life. I find that the fixture had no actual value and I therefore dismiss the landlord's claim for the cost of its replacement.

In the absence of evidence as to the age of the lock at issue, it is impossible to determine whether the lock had enjoyed its useful life. The landlord did not dispute that the shed roof had no overhang and I find that the absence of an overhang combined with the age of the lock significantly contributed to its failure. I find that the landlord has

failed to prove that the tenants contributed in any significant way to the lock's demise and accordingly I dismiss the claim for the cost of its replacement.

Residential Tenancy Policy Guideline #37 contains a depreciation table which identifies the useful life of items. The useful life of interior paint is identified as 4 years. I find that the landlord would have had to repaint the rental unit in any event as the useful life of the paint had expired by the end of the 5 year tenancy. Even if the colours in the bedrooms had bled through the tenants' efforts to repaint, I find that it would have taken no extraordinary effort to repaint those rooms as they already had one coat of white paint. There is no evidence that the room which the landlord claims was painted yellow and not repainted by the tenants was painted in such a dark colour that it required an unusual degree of attention. However, the tenants did not claim to have received permission to paint part of the basement room black and I find that while the landlord may have had to paint anyway, the fact that the tenants used black paint required significant effort to restore the room to its original colours. I find that the tenants should be held liable for 15% or \$194.40 of the cost of painting and I award the landlord that sum.

As the tenants did not dispute having drilled holes in the basement floor, I find that the landlord is entitled to recover the cost of filling those holes. I find the landlord's estimate of \$50.00 to be reasonable and I award the landlord that sum.

As the landlord has been partially successful in her claim, I find she is entitled to recover the \$50.00 filing fee and I award her \$50.00. I dismiss the landlord's claim for the cost of developing photographs as under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee.

Conclusion

In summary, the landlord has been successful in the following claims:

Removal of lumber	\$ 59.25
Tree removal	\$100.00
Painting	\$194.40

Filling of holes in floor	\$ 50.00
Filing fee	\$ 50.00
Total:	\$453.65

I grant the landlord an order under section 67 for \$453.65. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: March 02, 2010
