Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes Tenant: MNSD, FF
Landlord: MNDC, MNSD, MNR, FF

Introduction

This was the reconvened hearing dealing with the cross applications of the parties and should be read in conjunction with my Interim Decision of October 15, 2010.

The parties appeared, gave further affirmed testimony and were further provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Preliminary Matters

Preliminary Matter #1

At the first and reconvened hearing on this matter, I had not viewed the video evidence on Youtube.com supplied by the Tenants. At the reconvened hearing, the Landlord confirmed the written statement submitted only to me that she was unable to view the video, despite receiving help to open the site. Tenant BE gave specific, detailed instructions at the reconvened hearing as to how to log onto the site. I allowed the Landlord an additional week, to **November 1, 2010**, to view the video and make a written submission to me for comments/rebuttal of the video, with the specific instruction that she provide the Tenants a copy of the response.

The Landlord's written submission indicated that she was still unable to open the video, but provided a response with rebuttal of what she believed could be in the video. I also note that the written submission contained what appeared to me to be additional testimony in support of her claim, which I have not considered.

Section 3.5 of the Rules of Procedure, which addresses video evidence not filed with the Application, states that the evidence must be filed and received by the RTB before the dispute resolution proceeding and served on the respondent as soon as possible, of which I find compliance. There is no restriction in the Rules for submissions of evidence

via an internet site. The modern trend is a dramatic increase in communication through the internet and traditional methods of using video transmissions will be less and less common.

I accept that the Landlord had the opportunity to view the video and I allowed and considered evidence.

As a way of explanation, the video depicted the state of the rental unit and yard after the Tenants' belongings were removed, the tree sap falling on the Tenants' car and phone messages from the Landlord to the Tenants.

Issue(s) to be Decided

Has the Landlord breached the Act or tenancy agreement, entitling the Tenants to an Order for monetary relief?

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Background and Evidence

Each participant submitted a voluminous amount of documentary evidence to the *Residential Tenancy Branch,* and with the exception of the Youtube.com video, all participants acknowledged receipt of the others' evidence. Further, each participant provided lengthy testimony in support and rebuttal of all evidence, so I do not find it necessary to list individually each separate document.

In the interest of natural justice and 11.5 (a) of the Rules, I have allowed all evidence and carefully considered it, along with the testimony, in making my decision.

This tenancy began on August 20, 2007, for an 11 ½ month fixed term, which was renewed two times thereafter annually, ending on July 31, 2010. The Tenants provided written notice in May 2010 of their intent not to renew. The security deposit of $1,150.00 was paid in August 2007.

Tenants' Testimony:

The Tenants are seeking a monetary order for $2,346.00 for the following:

1. Return of the Security Deposit, doubled
2. The filing fee--$50.00

In addition to the evidence, Tenant BE's relevant testimony included stating that he provided the forwarding address in writing on August 4, 2010, and despite several requests, the security deposit was never returned. The Landlord acknowledged receipt

of the forwarding address and that she has not returned the security deposit as of the date of the hearing or made application to retain the deposit, but testified that she believed the parties had an agreement that the Tenants would not claim the deposit if she waived her rights to claim for damages. The Tenants denied making such agreement.

The Tenant BE testified that they moved out on August 1, that the final inspection was just a walk through and that he never received a copy of the addendum page, which I note is page 3. Tenant AE testified that she was not allowed at the final inspection as the Landlord insisted only Tenant BE be there, while the Landlord wanted and had a witness with her.

Tenant BE testified that there were some things left at the time of the inspection on August 1, but that all was removed by that night.

The Tenants testified that the light fixture came crashing down and almost hit Tenant AE in the head. Tenant AE stated that the Landlord said she did not expect them to fix or replace the light fixture.

Tenant BE stated that they installed media outlets during their tenancy, but stated that they had the consent of the Landlord and asked her where she wanted them placed.

The Tenants testified that they told the Landlord before the tenancy began that they wanted a trampoline and swing set as they had young children, and that the Landlord was fine with that. Tenant AE testified that the Landlord would visit on a regular basis during the three year tenancy, knew of the trampoline and said nothing, as it was not their style to hide things.

I note there is a clause in the tenancy agreement restricting this equipment without the written agreement of the Landlord.

The Tenants testified and I note they supplied evidence of twice yearly professional carpet cleaning, but that the stains could not be lifted because of the age and material of the carpet. The Tenants testified they were told the Teflon coating had worn off and that it was impossible to keep stains off.

The Tenants testified that they kept the yard watered and maintained, but that it was impossible for some areas of the yard to grow grass due to the falling needles from the fir tree. Additionally the tree dripped sap all year long, causing damage to the Tenants' car, according to the Tenants.

The Tenants supplied evidence from a professional house cleaner and have denied leaving the rental unit in a state which required cleaning.

Tenant BE testified that the drains were slow draining and had brought that to the Landlord's attention during the tenancy and stated the handrail leading to the upstairs was broken when they moved in.

Landlord's Testimony:

The Landlord is seeking a monetary order for $4,564.00 for the following:

1. Repair broken light fixture--$96.74
2. Paint/Drywall repair—$210.00
3. Carpet Cleaning/Stain Removal—$456.84
4. House Cleaning--$60.00
5. Missing Blind Valance Cover—$41.70
6. Plumbing repair—$212.00
7. Handrail repair--$240.00
8. Landscape neglect--$75.00
9. Over holding Tenant--$222.00
10. Back Lawn Repair--$500.00
11. Front Lawn Repair--$150.00
12. Loss of Rental Income--$2300.00

In addition to the evidence, the Landlord's relevant testimony included her stating that the Tenants did not maintain the yards according to the terms of the tenancy agreement, and that, combined with the state of the rental unit in July 2010, caused her not to be able to rent the house on August 1, 2010, at the end of the tenancy. The Landlord further testified the Tenants did not turn in the keys until August 3, which is the basis of her claim for over holding and that they left the rental unit in a state of damage which caused her to lose the rent for August 2010.

The Landlord testified that her carpets were of high quality, that she kept them in immaculate condition because of the dying and staining of the carpet by her carpet professionals. She affirmed her belief the Tenants damaged the carpets.

The Landlord denied giving the Tenants permission to install the trampoline and swing set as she knew it would damage the yard. She acknowledged that she was aware the Tenants had a trampoline and swing set as she did visit them on occasion.
The Landlord testified that due to this and the Tenants not maintaining the yard pursuant to the tenancy agreement, she suffered an income loss.. I note the Landlord never asked for the rent to be increased $75.00 per month during the three year tenancy, as was allowed in the tenancy agreement for lack of lawn maintenance as she did not want to bother them. She denied the tree sap causing the damage and for the grass not to grow.

The Landlord testified that the move out inspection report was just to write down stuff, that when she and Tenant BE did the inspection, she would just say things out loud when walking through each room and that he never said anything. It is undisputed that

Tenant BE did not sign the addendum, but the Landlord stated she used it to write down notes.

The Landlord stated she did not return the security deposit as she thought there was an agreement with the Tenants that she would keep the deposit and not claim for any damages. The Landlord testified that she was on good terms with the Tenants during the tenancy and was surprised they applied to have the security deposit returned and to have said some of the things in the hearing.

Upon query, the Landlord acknowledged that the house was 15 years old.

Analysis

Based on the above 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. In this case ***both*** parties bear the burden of proof.

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Tenants' Application:

As the Landlord did not comply with section 38 of the Act, which here required the Application to be filed within the 15 days from August 4, 2010, section 38(6) requires the Landlord to repay the Tenants double the security deposit held, plus the applicable interest.

I grant the Tenants the filing fee of $50.00.

I find the Tenants established a monetary claim for **$2,373.67**, comprised of double the security deposit of $1,150.00, $23.67 in interest and $50.00 filing fee.

Landlord's Application:

Section 35 (3) and (4) of the Act requires a landlord complete a condition inspection report in accordance with the regulations and give the tenant a copy of that report in accordance with the regulations. A failure of this requirement results in the application

of section 36(c), which extinguishes the right of a landlord to claim against the deposit for damages. Although I find that the right of the Landlord to claim against the deposit for damages is extinguished, the Landlord is still entitled to claim for damages allegedly caused by the Tenants.

I find the Inspection Report to be on an outdated form and that further, the Landlord has not properly completed the outdated inspection report by leaving blank Boxes 3-1 and 4-1. Upon careful review of the document, it appears to me that the Landlord filled in Tenant BE's name on 3-1, which, along with the Landlord's acknowledgement that she completed the addendum after the inspection, suggests to me a likelihood that the Landlord may have put remarks and comments on the report without the Tenants knowledge and after the fact. Therefore I find that any claim for damage attributable to these Tenants is in doubt. I am further troubled that the Landlord required Tenant AE not be in attendance at the walk through, but insisted on a witness herself.

Repair broken light fixtures- The Landlord and Tenants provided conflicting testimony concerning the light fixtures; however the Landlord supplied evidence of a light fixture purchased during the tenancy. RTB Guidelines 37 provides a table for the useful life of Work Done or Things Purchased. Where an item has a limited useful life, it is necessary to reduce the repair or replacement cost by the depreciation of the original item. Light fixtures have a useful life of 15 years and therefore I find that the light fixtures were fully depreciated and **dismiss** her claim for $96.74.

Paint and Drywall Repair-The Landlord notated that the Tenants did repair some walls in a satisfactory manner, yet the actual drywall repair was done in October 2010, more than 2 months after the end of the tenancy and after a new tenancy had begun, which I find makes the Landlord's claim that these Tenants caused the damage lack credibility. Based on a lack of evidence, I find that the Landlord has not proven the test for damage and loss and I hereby **dismiss** her claim for $210.00.

Carpet Cleaning/Stain Removal-The Landlord's statement that she has the carpets dyed and stained at the end of each tenancy suggests to me that she would have this done no matter the condition of the carpet. However, I accept the evidence of the Tenants that they had regular professional carpet cleaners and that they maintained the carpets as required under the Act. Further RTB Guidelines 37 provides a useful life of carpets to be 10 years and therefore I find that the carpets were fully depreciated and **dismiss** her claim for $456.84.

House Cleaning- At the end of a tenancy, tenants are required to leave the rental unit reasonably clean. The Tenants provided evidence of a professional house clean and a video of a clean house at the end of the tenancy and the Landlord provided a receipt for a small general clean. If the Landlord wanted to incur a very small expense to further clean the rental unit at the end of three year tenancy, that is her right, but I find this was not the responsibility of the Tenants under the Act. Therefore I **dismiss** the Landlord's claim for $60.00.

Missing Blind Valance Cover—The Tenants conceded responsibility and I **grant** the Landlord's claim for $41.70.

Plumbing Repair-The Landlord supplied confusing evidence as to what the actual claim was. The invoice suggests plumbing repair, which I find is not directly attributable to the Tenants. There is also an invoice for faucet replacement and I find under Sec. 37 of the RTB Guideline that faucets have a useful life of 15 years and were fully depreciated. I therefore **dismiss** the Landlord's claim for $212.00.

Handrail Repair-The invoice supplied by the Landlord for handrail repair was dated August 31, 2010, a month after the tenancy ended. I find the evidence insufficient that the Tenants damaged the handrail due to the delayed repair, which also suggests no urgency. I find that the wooden handrail has a useful life of 10 years and was fully depreciated. I therefore **dismiss** the Landlord's claim for $240.00.

Landscape Neglect- The Landlord has no basis for this claim other than the term in the tenancy agreement which allows her to increase the rent $75.00 per month at her discretion for lawn neglect. I find the Landlord's post tenancy attempt to make claim for a term of the tenancy agreement arbitrary and capricious and not allowed under the Act. I therefore **dismiss** her claim for $75.00.

Over holding Tenant-The parties provided conflicting testimony as to the last day of the tenancy, with Tenant BE stating the last day was July 31, 2010, and the Landlord stating it was August 3. I note the inspection report was dated August 1, 2010, and I accept that the Tenants still had furnishings and possessions in the house on that day and is liable to the Landlord for over holding on a per diem basis for one day. I therefore **grant** the Landlord's claim in the amount of **$77.00**.

Back and Front Lawn Repair- The Landlord acknowledged she visited the Tenants throughout the tenancy on a regular basis, knew the Tenants had a trampoline and swing set and even though she testified she was a professional landscaper, never made mention of condition of the lawn. The Landlord specifically stated she did not want to "bug" them; therefore I find the Tenants' testimony that the Landlord gave them permission to have the playground equipment credible and I find that the Landlord's testimony in this regard lacks credibility. Further, one receipt was dated prior to the tenancy ending and the other receipts provided by the Landlord for this item were dated in October 2010, more than 2 months after the tenancy ended. Based on a lack of credible evidence and testimony, I find that the Landlord has not proven the test for damage and loss and I therefore **dismiss** her claim in the amount of $650.00.

Loss of Rental Income-The Landlord claims she lost rent in August due to the actions of the Tenants. However, Landlord provided statements of present and potential tenants, all describing the condition of the rental unit and lawn in July, the last month of the tenancy and when the Tenants were moving. I can find no requirement under the Act which obligates the Tenants to have a pristine rental unit when packing to move.

The Landlord is required to mitigate any alleged damage or loss. RTB Guideline 3 states if a Landlord is claiming damage due to allegations of damage caused by the Tenants, the Landlord is ***required*** to mitigate the loss by completing the repairs in a timely manner. [emphasis added]

The receipts provided by the Landlord show that a large portion of the repairs, including drywall and lawn repair were done 2 months after the end of the tenancy and after a new tenancy had begun.

The Landlord provided evidence that prospective tenants walked away from the rental unit due to the state of the rental unit in July, when the Tenants still occupied the rental unit and were packing to move, yet the "next batch" of prospects in August were not acceptable because they were all pet owners. Therefore I find the evidence that the Landlord could not rent the rental unit in August insufficient and contradictory and that she failed to mitigate her loss by making repairs in a timely manner. Based on a lack of evidence, I find that the Landlord has not proven the test for damage and loss and I therefore **dismiss** her claim in the amount of $2,300.00.

I find the Landlord has established a monetary claim of **$118.17,** comprised of $77.00 for over holding and $41.70 for the missing blind valance cover.

The Landlord may deduct **$118.17** from the **$2,373.67** of the Tenants' monetary claim awarded, and must return the balance of **$2,255.50** to the Tenants. Pursuant to the policy guideline, I have provided the Tenants with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord has established a monetary claim of $118.17.

The Tenants have established a monetary claim of $2,373.67 and are granted a monetary order for the balance after Landlord's deduction in the amount of $2,255.50

This 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: November 08, 2010.

Dispute Resolution Officer