



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNSD, MNDC, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution. Both parties sought monetary orders against each other.

The hearing was conducted via teleconference and was attended by both parties.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for damage to the rental unit and residential property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Act*.

In addition it must be decided if the tenants are entitled to a monetary order for double the amount of the security deposit and pet deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement and addendums signed by the parties on March 28, 2005 for a month to month tenancy with a monthly rent of \$1,700.00 due on the 1st of each month and that a security deposit of \$850.00 and a pet damage deposit of \$850.00 were paid. The parties agreed the tenancy ended on October 31, 2010.

The tenants testified that they provided the landlords with their forwarding address in writing on November 4, 2010. The landlords agreed they received it on that date in writing. The landlord testified that he did not file an Application for Dispute Resolution until February 24, 2011 because they were not complete in assessing the full extent of the damages and costs until that time.

The landlords stated that they had been unaware of the time line requirement for the return of the security deposit and when consulting with the Residential Tenancy Branch they were advised that had up to 6 months to make an application. The tenants pointed

out the tenancy agreement stipulated the current time line requirements for the return of a security deposit.

The landlords provided testimony and photographic documentation of the condition of the hot tub and pool at the end of the tenancy. Specifically the landlord claims that nothing in the hot tub or pool was working and that the pool had sludge on the bottom and many foreign objects such as a snow shovel; several big stumps; a machine hammer and assorted tools. The landlord also notes there were holes in the pool liner and that both covers were damaged and/or removed.

The tenants contend that they had tried to maintain both the pool and hot tub for the first 3 years of the tenancy but that they were constantly having to deal with ongoing debris from the surrounding trees that would blow down branches during windy periods that would end up in the pool and causing damage to the hot tub cover. In addition the working parts kept breaking down and required constant repair. As a result the tenants stopped maintaining both the pool and the hot tub.

The tenants state they informed the landlord of this about a year ago when the landlord attended the rental unit for an inspection and the landlord had promised to assist them with some of the issues but that nothing was ever followed up on. The tenants confirmed that they did not inform the landlords as soon as they had decided that they were no longer going to maintain the pool and hot tub.

The landlord agrees that he noted during the inspection both the pool and hot tub were in disrepair and that he reminded the tenants of their responsibilities under the addendums in the tenancy agreement that required that they maintain the pool and hot tub and that the condition at the end of the tenancy must comply with the requirements in the addendum. The landlord stated the tenants agreed they knew their responsibilities and they were working on it.

The landlord submitted into evidence a copy of a Condition Inspection Report that shows a move in inspection was completed on April 22, 2005 that was signed by the female tenant. The report has the condition at the end of the tenancy completed by the landlord but it is not dated as to when the inspection was completed and there is no signature from either tenant.

The tenants assert the they were unaware that a condition inspection had been completed and that they did not receive copies of either the move in condition report or the move out condition inspection report until they received the evidence for this hearing.

The landlords also provided several photographs showing specific issues with the condition of the rental unit and the residential property. The landlords seek compensation for painting and wall preparation; replacement of a door knob; replacement of damaged and dirty blinds; cleaning (10 hours at \$18/hr) and cleaning supplies; and dump charges and fuel.

The tenants testified that they had left the unit clean and undamaged and that the photographic evidence was misleading, particularly the drywall pictures as the holes were extremely small (size of a pencil). The tenant is uncertain as to where the photograph of the blinds was taken because she had cleaned all the blinds. The tenants also assert that many people left garbage at the back of the yard.

Analysis

Section 38(1) of the *Act* states a landlord must, within 15 days of the end of a tenancy and receipt of the tenants' forwarding address, either return the security and pet damage deposits less any amounts mutually agreed upon or file an Application for Dispute Resolution to make a claim against the security and pet damage deposits.

Section 38(6) states that should the landlord fail to comply with Section 38 (1) that the landlords must pay the tenants double the amount of each of the deposits. While I accept and understand why the landlord did not file an Application for Dispute Resolution until they had all the damage assessed, the *Act* does not allow any extension of time to make the Application.

As such, I find the tenants are entitled to double the amount of both the security deposit of \$850.00 and the pet damage deposit of \$850.00 for a total compensation of \$3,400.00 plus interest on the original deposits.

I accept that the parties had a written agreement with regard to the maintenance and upkeep of the hot tub and pool. I also accept, from the tenants' testimony that the work and money required upholding this commitment became cumbersome and that they stopped maintaining either facility. However, as the tenants failed to immediately inform and/or try to negotiate with the landlord a change to their agreement the tenants failed to mitigate any possible damage caused to the facilities for over a 2 to 3 year period of neglect.

I find the landlords have established, through the submission of receipts and quotes for repairs the value of this loss to the landlord to be in the amount \$4,111.12.

In relation to the landlords' claim for damages and cleaning to the residential property, I accept, primarily based on the photographic evidence that rental unit and residential property required cleaning and painting. However, Residential Tenancy Policy Guideline 1 states that a landlord is responsible for painting the interior of a rental unit at reasonable intervals.

In addition, the guidelines indicate that the useful life of an interior paint job is 4 years and as the tenancy was over 5 years in duration I find it is the landlords' responsibility to paint the rental unit. I find the wall damage depicted in the photographic evidence to be sufficiently minor as to be considered normal wear and tear.

I therefore dismiss the portion of the landlords' application for painting and painting preparation. I find the landlords have established the remainder of their claim for cleaning; dump charges; replacement of blinds and a door knob in the amount of \$617.29.

Conclusion

Based on the above, I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$4,728.41** comprised of \$4,111.12 pool and hot tub repairs and \$617.29 for cleaning and minor repairs/replacements.

I order the landlord may deduct the security deposit, pet deposit, and interest held and compensation pursuant to Section 38(6) in the amount of \$3460.21 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,268.02**. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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 *Residential Tenancy Act*.

Dated: March 23, 2011.

Residential Tenancy Branch