Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site or property, and to keep all or part of the security deposit.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord suffered a loss due to that breach?
3. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of the breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a fixed term tenancy that began on May 1, 2010 and was set to switch to a month to month tenancy after May 1, 2011. Rent was payable on the first of each month in the amount of $1,200.00 and on May 1, 2010 the Tenant paid $600.00 as the security deposit. The rental space consisted of the main floor of the house and shared access to the yard. The Tenant was responsible for yard maintenance and had sole access to the inside of the green house. There were tenants occupying the lower level of the house who had shared access to the yard areas. The Landlord provided a lawn mower and various other gardening tools for the Tenant's use in maintaining the yard. The Tenant vacated the property April 30, 2011 so the new tenant could take possession. She provided the Landlord with her forwarding address in writing via e-mail on June 7, 2011. The parties mutually agreed that $200.00 would be deducted from the Tenant's security deposit to

cover her shortfall of April 2011 rent. The Landlord retains the $400.00 balance of the security deposit. There were no move in or move out inspection forms completed.

The Landlord affirmed that the tenancy ended sometime around May 1, 2011 and that she had the Tenant look after the move in of the new tenant on May 1, 2011, as the Landlords were out of town. She stated the Tenant had agreed to meet with her on May 11, 2011 so they could go back to the rental unit for a move out inspection. She met with the Tenant at a local coffee shop, after the Landlord had viewed the rental property, and after their discussion the Tenant refused to return to the rental unit for the walk through. After viewing the property the Landlord is seeking the following damages:

- $218.40 for costs incurred to have the lawn cut and compost pile removed at $160.00 and debris removed at $35.00, plus taxes which was completed May 13, 2011. The Landlord stated there were numerous bags of lawn left behind and it appeared the lawn had not been cut in a very long time as required by 9(d) of the tenancy agreement.
- $110.88 for a pest control company to remove a bees nest that had been created in a pile of lawn debris in the back yard
- $49.20 for parts to repair the lawn mower which was broken by the Tenant. The lawnmower was approximately six years of age.
- $40.00 for the cost to have the new Tenant remove the last of the debris after the bees were eliminated
- $167.99 which is the estimated cost to replace a bathroom cabinet that was removed from the wall and left damaged in the basement. This cabinet has not yet been replaced.
- $183.03 to repair the glass on the fireplace door which was original from 1950 and the glass on the greenhouse. One pain of glass was cracked on the lower side wall of the greenhouse which is adjacent to the path which everyone has access to. These repairs have not yet been completed and this is an estimated cost of repair.
- $276.08 for the new living room blind. The original blind was only approximately five years old and was damaged during the tenancy. The Landlord purchased a blind that was the same as the original.

The Landlord confirmed that she wanted the Tenant to do a walkthrough of the rental unit on May 11, 2011 even though the new tenant had occupied the property since May 1, 2011 and had all of their possessions inside the rental unit.

The Tenant testified and made reference to numerous e-mail conversations between her and the Landlord , which were provided in her evidence, whereby the Landlord was

informed in February 2011 of the broken lawn mower and to which the Landlord accepted responsibility for its repair and the cost to hire someone to maintain the yard in the interim. The Tenant stated she was able to borrow a lawn mower a couple of times and that she was not able to hire a lawn care company at a reasonable rate. She contends that she attempted to cut the law after renting a mower and only got half way through before having to return the lawn mower. She did not leave numerous bags of lawn debris or other debris as she had hauled several loads away and there were only two bags of lawn debris when she left. She stated she had no idea there was a bee hive hidden in the compost. The Tenant stated she did not agree with the Landlord paying the new tenant $40.00 to remove the last of the debris as she would have taken it if the Landlord had requested.

The Tenant agreed the bathroom cabinet was taken down when the house was painted and that she had no idea it had been damaged. She cannot see the picture the Landlord provided of the cabinet in her evidence but believes the cabinet was not worth as much as what the Landlord is claiming.

The Tenant argues that the claims for glass on the fireplace and greenhouse are not her responsibility. She referred to her evidence which supports she had concerns about using the fireplace and that the Landlord acknowledged it was very old and to use care when using it. She used the fireplace with care and the class simply broke after the door had been closed for a period of time. As for the greenhouse the Tenant has no knowledge how or when that glass got broken. She advised the yard is shared by all tenants and anyone could have knocked up against the greenhouse to cause the crack or the crack could have been caused by anything else like bad weather or an earthquake. The tenants from downstairs also have their bbq nearby which could have damaged it.

The Tenant alleges the blinds never worked properly from the onset of her tenancy and during one of the Landlord's visits she tied a knot in the cord. She admits the blinds would get caught in the window and that she took the best care she could and if they were damaged it is from normal wear and tear.

In closing the Landlord disagreed with the Tenant's testimony arguing there were much more than two bags of debris left in the yard. As for the blind she did tie a knot in them however she was in the blind business and knew how to repair a blind so she was not damaging them. She confirmed she had not filed a previous application and that this application filed on July 6, 2011 was the first application she filed. She does not have an Order allowing her to keep the Tenant's security deposit and she received the Tenant's forwarding address in writing via email on June 7, 2011.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37 (3)(a) 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.

The *Residential Tenancy Regulation* Part 3 Section 21 provides that in dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The evidence supports that on April 18, 2010 the Landlord had a spring clean up, mulching, and debris removal of the yard which is just prior to the onset of the tenancy. Item 9(d) of the tenancy agreement provides that the Tenant is responsible for regular care and maintenance of the yard. That being said the Tenant's evidence supports the lawn mower was broken as of February 2011 and the Landlord accepted responsibility for the cost to cut the lawn from that point onward.

The Landlord's acceptance for cutting the lawn does not preclude the Tenant from her responsibility for removing the previously accumulated debris. Also, given that the debris consisted of lawn cuttings and waste I find it could not have acquired during the

eleven days the new tenant occupied the premises. Therefore I dismiss the portion of the Landlord's claim which relates to cutting the lawn ($160.0 + GST) and approve her claim for the debris removal in the amount of **$79.50** which is comprised of $35.00 + $4.50 GST + $40.00 paid to the new tenant.

The *Residential Tenancy Policy Guideline #1* provides what a landlord and tenant's responsibilities are for the residential premises. It stipulates that pest control expenses and maintenance and repairs of equipment and appliances provided by the Landlord are the responsibility of the landlord.

As per the aforementioned I find there to be insufficient evidence to meet the burden of proof, as listed above. Accordingly I dismiss the Landlord's claim of $110.88 for pest control and $49.20 for replacement parts for the lawnmower.

The evidence supports the bathroom cabinet was removed from the wall, suffered damage and was not replaced at the end of the tenancy. Therefore, in accordance with section 32 of the Act, I find the Landlord has met the burden of proof and I approve her claim in the amount of **$167.99.**

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove damages occurred to the blinds during the course of the tenancy. Accordingly, the only evidence before me was verbal testimony and I find the disputed verbal testimony insufficient to meet her burden of proof.

After careful consideration of the evidence before me I find there to be insufficient evidence to prove damages to the fireplace glass, the greenhouse glass, and the window blinds were nothing more than normal wear and tear. There is no evidence to support these losses were the result of a breach of the Act. Accordingly I dismiss the Landlord's claim of $459.11 ($183.03 glass repair + $276.08 blinds).

The evidence supports the Landlord holds $400.00 as the Tenant's security deposit; this tenancy ended May 1, 2011, the Tenant provided the Landlord with her forwarding address on June 7, 2011 and the Landlord made her application for dispute resolution on July 6, 2011.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make

application for dispute resolution claiming against the security deposit. In this case the Landlord was required to return the Tenant's security deposit in full or file for dispute resolution no later than June 22, 2011. The Landlord did not file until July 6, 2011.

Based on the above, I find that the Landlord has failed to comply with Section 38(1) of the *Act* and that the Landlord is now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security deposit and the landlord must pay the tenant double the security deposit. Therefore the Landlord is holding in trust $800.00 as the security deposit (2 x $400.00).

Monetary Order – I find that the Landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Debris removal	$ 79.50
Bathroom cabinet	167.99
SUBTOTAL	$247.49
LESS: Security Deposit $800.00 + Interest 0.00	-800.00
Offset amount due to the TENANT	**$552.51**

Conclusion

The Tenant's decision will be accompanied by a Monetary Order for **$552.51**. This Order is legally binding and must be served upon the Landlord.

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: October 07, 2011.

Residential Tenancy Branch