



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACGREGOR REALTY & MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes mnd, mndc, mnsd, ff

Introduction:

The landlord applies for a monetary award from the tenant, following the end of this tenancy. The landlord also seeks an order to retain the tenants' security deposit in partial satisfaction of the monetary award.

The tenant also applies for a monetary order from the landlord, and for the return of the security deposit.

At the start of the hearing, the tenant requested an adjournment, on the grounds that he had been experiencing high blood pressure, and is now on medication to control it. He has only been cleared by his doctor about 2 weeks ago, yet wants a further 6 to 8 weeks time so that he can more fully prepare his response to the landlord's claim, and to prepare for his own claim which was recently filed. The landlord objected to any postponement, advising that he has been trying to resolve this matter for many months, as the tenancy ended over a year ago. He alleges the tenant is employing a delay tactic.

I note that the tenant gave no warning to the landlord in advance of the hearing that an adjournment would be sought. He filed no confirmation from his doctor of any medical condition that would interfere with his participation in the hearing. He is articulate and intelligent, and had no difficulty in expressing himself in a calm and studied manner while applying for an adjournment.

In deciding whether or not to grant an adjournment, there are factors I must consider (as set out in Rule 6.4). I have done so. I note that the tenant's own testimony indicates his health has now stabilized. I consider that 2 weeks is a sufficient time to have prepared a defense to the landlord's claim, and that to adjourn would result in an unnecessary delay of the adjudication of that claim, given that the landlord was ready to proceed. I determined it was appropriate that the landlord's claim be heard, and not be adjourned. I also note that one of the objectives of the Rules of Procedure for hearings of this nature is to ensure a consistent, efficient and just process for resolving disputes (Rule 1.3). As the hearing proceeded, my decision to proceed was reinforced by virtue of the fact that the tenant had no difficulty in articulating a defense to the landlord's claim. The

tenant was well prepared, and in fact had a witness on standby, who called in and participated in the hearing.

However, I determined there are issues the tenant wished to have resolved in his own claim that are not related in fact or law to the landlord's claim, and I accepted that it may be the case that these could require more than 2 weeks to prepare for by the tenant. I also note that separate application by a landlord and tenant are not always appropriately joined, and I am authorized by Rule 2.3 to dismiss unrelated matters, with liberty to re-apply. With this in mind, I offered the tenant the option of proceeding with his claim at the same time as the landlord's claim, or alternatively to withdraw his claim, on the understanding that I would order the right for him to reapply for a new hearing. The tenant requested the latter option. I therefore dismiss the tenant's claim, with the right to reapply.

Issues to be decided:

Is the landlord entitled to a monetary award from the tenant?

Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence:

1. This tenancy began November 1, 2007, and ended May 31, 2012. At the time the tenancy ended, monthly rent was \$1,940.00. A security deposit was paid on or about December 14, 2007, in the sum of \$910.00. The deposit has not been returned to the tenant by the landlord.
2. A condition inspection occurred at the start of the tenancy. No Condition Inspection Report was provided to me in evidence by the landlord.
3. The tenancy agreement included an Addendum, signed and initialled by all parties. The addendum deals with maintenance to the property, and includes terms that the tenant must cut the grass and perform routine yard maintenance. The tenant was responsible for a reasonable amount of weeding of the flower beds. The landlord was responsible for major projects such as tree cutting.
4. An obligation of the landlord to do pruning was stroked out in the Addendum. The landlord testified this was because it was agreed the tenant would do the pruning. The tenant testified that the landlord has fraudulently altered the Addendum, and stroked out the word "pruning" after the document was signed.
5. The Addendum indicates that the landlord is not responsible for cutting grass, shovelling snow, and weeding flower beds.
6. The landlord provided photos he contends show the condition of the yard at the start and end of the tenancy. The photos indicate a quite immaculate yard at the start, and an overgrown and unkempt yard at the end of the tenancy.
7. The tenant alleges the photos from the start of the tenancy were not taken at the time his tenancy began, and that in fact the previous tenant had left the yard in a poor condition.

8. The tenant contends that he intended to control weeds in the landscaped part of the yard by applying bark mulch, but that the landlord would not pay for bark mulch.
9. The tenant contends that in fact he sufficiently attended to yard maintenance, and that the premises were left in essentially the same condition as they were when the tenancy began.
10. The witness testified that the tenant prior to this tenant at the subject premises had cut the lawn, but had not attended to yard maintenance. There were weeds in the garden when the tenant's tenancy began in 2007. The witness was a neighbour, and took good care of his own yard. He complained to the landlord on May 5, 2008 that the lawn of the tenant was overgrown and the backyard unkempt. After his complaint the lawns were cut about every 2nd week. The witness got to know the tenants over time, and he began to maintain their yard for them. He cut the lawn and in summer of 2009 did a major trimming of the bushes. He moved away in the fall of 2012, but continued to cut lawn and maintain the yard for the tenant until about September, 2011. He has not seen the premises since.
11. The landlord contends that the yard was let go after that time, until the tenant left at the end of May, 2012. An email of April 25, 2013 to the landlord advised the lawn was very high, and the hedges and plants were in serious need of pruning.
12. After the tenancy ended, the landlord incurred expense to have significant yard work done. The work involved much weeding and running, debris removed (many bags), remove large dead branches, remove 2 dead azalea bushes, remove saplings and roots, prune the rhodos, trim the tree by the front door. The various invoices for the work and for the cost of the bags, total \$1,009.54.
13. The landlord also hired a cleaner, whose invoice was \$120.00. The tenant confirms he has agreed to pay this invoice.

Analysis:

It is a requirement of every tenancy that a Condition Inspection Report be prepared at the start and end of the tenancy. The landlord should have, but failed to provide a copy of any such report with his evidence, from which I draw an adverse inference. With respect to the issue of the condition of the yard at the start of the tenancy, I prefer the testimony of the witness and the tenant over the evidence of the landlord, and find that the yard was not in a pristine condition when the tenancy began.

On the other hand, I accept the landlord's testimony that the tenant signed the Addendum which included the deletion of the job of pruning as a responsibility of the landlord. I accept that pruning the shrubs and weeding the landscaped portion of the yard was the tenant's contractual responsibility.

I found the testimony of the witness to be forthright and credible, and I accept that he took over the role of maintaining the premises. This satisfied the tenant's yard maintenance responsibilities, until September, 2011.

I accept that the tenant failed to properly maintain the lawn of yard thereafter as agreed to in the tenancy agreement. Certainly the spring growing season commences well before the end of May (when the tenancy ended), and I accept the landlord's evidence and photographs that the yard was simply let go after the witness stopped doing the maintenance. I also note that the witness did a major trimming of bushes in the summer of 2009, and I find no evidence of any further trimming after that. I accept that the landlord arranged for the yard work to be done immediately after the tenancy ended, and that the landlord in fact paid the sum of \$1,009.54 for this work.

I find nothing in the tenancy agreement that required the landlord to pay for bark mulch (as a means to control weeds), and I find no indication that the landlord refused to allow the tenant to do, so at the tenant's expense.

I accept that the tenant agreed to maintain the yard, did so until September, 2011. The tenant failed to continue to do so after the witness stopped doing the work. While clearly this is not an exact science, the relevant and accepted evidence before me indicates that the condition of the yard at the end of the tenancy failed to meet the standard promised in the agreement by the tenant. The tenant did not agree to keep the yard in a perfect condition, and certainly did not receive it in that condition. However, the tenant also failed to properly maintain the yard from the time the witness stopped doing the work (September 2011, until the tenancy ended May 31, 2012. I accept that the amount of work by the landlord's worker after the tenancy restored the yard and lawns to a condition that surpassed the condition in which the tenant received the property. I therefore find it appropriate that the costs be shared equally by the parties. I award the sum of \$504.77 to the landlord representing the tenant's portion of the invoiced work. To this sum is added the \$120.00 cleaning costs the tenant has agreed to assume, for a total of \$624.77 payable by the tenant to the landlord.

The landlord is partially successful with his claim, and I therefore award recovery of the landlord's filing fee of \$50.00. The total award is \$674.77.

The landlord applies to retain the tenant's security deposit, which requires me to consider whether the deposit should be retained or returned, and whether the doubling provisions apply. In most situations, section 38(1) of the Act requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, to either return the deposit or file an application to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must pay the tenant double the amount of the security deposit (section 38(6)). In this case, there is no evidence before me that any of the exceptions to the landlord's obligations under section 38(1) apply. There is no evidence that any statutory grounds extinguish the tenants' right to claim the deposit. I accept that the tenant provided a forwarding address to the landlord shortly after the tenancy ended. The landlord failed to return the deposit, or file a claim, within the required 15 day period. I therefore find the tenant entitled to double the deposit, or \$1,820.00.

Setting off the landlord's award from the doubled deposit due to the tenant, leaves a sum of \$1,145.23 owing by the landlord to the tenant (\$1,820.00 – \$674.77). The landlord must pay this sum to the tenants immediately.

Conclusion:

I order that the landlord pay to the tenant the sum of \$1,145.23.

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: September 13, 2013

Residential Tenancy Branch

