



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order and an order permitting them to retain part of the security deposit and a cross application by the tenant for an order for the return of double the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Are the landlords entitled to a monetary order as claimed?

Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The parties agreed that the tenancy began on or about mid December 2012 and ended on June 15, 2013. They further agreed that rent was set at \$3,000.00 per month and that the landlords collected a \$3,000.00 security deposit at the outset of the tenancy. The tenant provided his forwarding address in writing on June 15 when he vacated the rental unit. The landlords confirmed that although they could have insisted that the tenancy continue until the end of June, they agreed that the tenant could end the tenancy mid-month.

The landlords returned a total of \$2,208.00 of the security deposit and on July 2, 2013, filed a claim against the \$792.00 which was withheld.

The tenant seeks an award of double the security deposit as he believes the \$792.00 claimed by the landlords was wrongfully withheld and because he received advice from the Residential Tenancy Branch that because the landlords had collected twice the security deposit to which they were legally entitled to collect, a doubling penalty would be applied.

The parties agreed that the tenant was responsible to pay 60% of the utilities for the residential property. The landlords seek to recover 60% (\$129.10) of a \$215.17 natural gas bill and 60% (\$224.94) of a \$374.90 hydro bill. The tenant testified that on June 10, he gave the landlords a cheque for \$129.10 to cover his portion of the natural gas bill. The landlords acknowledged having received that cheque, but testified that the amount was paid to cover an outstanding utility bill and not the one they are claiming in this application. The parties agreed that the tenant owed \$210.19 for the hydro bill, prorating the tenant's portion to June 15, the date he vacated the rental unit.

The landlords seek to recover \$275.00 for cleaning and mowing the front and back yard. They claim to have spent 2 hours clearing leaves, branches and weeds from each of the lawns and say that they also had to power wash the steps to the driveway. The 4 hours spent clearing the lawn and washing the steps have a value of \$120.00 to the landlords, representing 4 hours of work at a rate of \$30.00 per hour. The landlords provided photographs showing the state of the yard. The landlords further testified that it took them 2 hours to mow the front yard at a rate of \$35.00 per hour and 2 ½ hours to mow the back yard at a rate of \$34.00 per hour for a total of \$155.00 claimed for mowing the lawns. The tenant testified that during his tenancy, he arranged for a lawn service to cut and bag grass at a cost of \$40.00 per visit. He acknowledged that he discontinued the service early and that the lawn had missed at least one cut, but stated that he believed the amount charged to be high. The tenant argued that there was not a significant amount of debris on the lawn requiring clearing and said that the driveway and steps would only have required sweeping.

The landlords seek to recover \$15.00 which represents half an hour of work to clean the deck and the glass in the railing. The landlords testified that the deck was not sufficiently clean while the tenant claimed that the deck was left clean. Both parties provided photographs of the deck.

The landlords seek to recover \$140.00 which represents 4 hours to clean and treat the swimming pool. They testified that there were a significant number of leaves which had to be vacuumed out and algae growth on the side which required chemical cleaning. The tenant testified that the pool was in poor condition when he moved into the unit and stated that throughout the tenancy, the landlord had chemically treated the pool. The landlords acknowledged that they had applied chemical treatments during the tenancy but testified that the cleaning required at the end of the tenancy was different.

The landlords seek to recover \$70.00 as the cost of replacing burned out light bulbs from inside and outside the unit. The tenant could not recall light bulbs having been burned out at the end of the tenancy. The landlords did not provide receipts to show the amount spent on the bulbs.

Analysis

First addressing the tenant's claim for double the security deposit, there is no provision in the Act whereby landlords are penalized who collect a greater security deposit than the half month's rent which is legislated. The only reference to this in the Act is section 19(2) which permits a tenant to deduct a security deposit overpayment from the rent.

Under section 38 of the Act, landlords are required to either return the deposit in full or file a claim within 15 days of the later of the end of the tenancy and the date they receive the tenant's forwarding address in writing. These 2 events both occurred on June 15 in this case, which means the landlords had until June 30 to file their claim. Section 38 (6) provides that if landlords fail to act within 15 days, they must pay the tenant double the amount of the security deposit. Because the Residential Tenancy Branch was closed on both Sunday, June 30 and Monday, July 1, Sections 25(2) and (3) of the *Interpretation Act* automatically move the final date to Tuesday, July 2 as the final date by which the landlords could file their application. The landlords filed their application on this date and therefore are not subject to any penalty. I therefore dismiss the tenant's application.

Turning to the landlords' claim, as the parties agreed that the tenant owed \$210.19 for the hydro bill, I award the landlords \$210.19. I find that the tenant made a payment on June 10 of \$129.10 for a natural gas payment. I find it unlikely that the tenant had arrears for that account which were exactly the amount of that payment, particularly as the invoice shows that the natural gas consumption in the previous month was significantly lower than for the month claimed. I find it more likely than not that the \$129.10 payment was for the invoice before me and therefore I find that the invoice has been paid in full and I dismiss the landlords' claim.

Having reviewed the photographs showing the state of the lawns, driveway and steps, I find that the grass was certainly overgrown and required cutting, but I find that the amount charged is excessive. I accept the tenant's testimony that typically he would pay \$40.00 to have the grass cut in both front and back and I find that the cutting which was required would have been more extensive than what the tenant paid as the grass was quite overgrown. I find that an award of \$60.00 will adequately compensate the landlords for lawn mowing and I award them that sum. I find that the photographs do not show that 4 hours of work would have been required to clear the very minimal amount of debris which had collected on the lawns and I find that the landlords have failed to prove that such work was required. I accept that the driveway, sidewalks and steps were not swept, but I am not satisfied that power washing was required. I find

that the landlords are entitled to recover \$10.00, which represents the half hour of work at a rate of \$20.00 per hour which I find would have been necessary to sweep the driveway, sidewalks and steps and I award them that sum. In total, the landlords have been awarded \$70.00 for lawn care and sweeping, which represents \$60.00 for lawn mowing and \$10.00 for sweeping.

The parties each submitted photographs of the deck. The landlords' photographs show a few leaves and some debris at the base of a potted plant which had died. The tenant's photographs show an immaculate deck and the same potted plant with the same debris. Neither party's photographs show soiled glass on the railing. I find that the tenant left the deck reasonably clean and that while the debris could have been removed from around the base of the potted plant, it would have taken no more than a few minutes to do so and is therefore in my opinion not compensable. I am not satisfied that the glass on the deck railing required cleaning. I therefore dismiss the landlords' claim for the cost of cleaning the deck.

The cleaning of a swimming pool is not an activity which one would expect an untrained person to undertake. The landlords did not provide a copy of the tenancy agreement showing that there was a provision whereby the tenant was required to maintain the pool, nor did they prove that they provided whatever instructions would have been required for the tenant to perform the task to a reasonable standard. I am unable to find that the tenant was required under the terms of the agreement to clean the pool and for that reason I dismiss the claim for the cost of pool cleaning.

The landlords did not provide receipts showing the amount spent on light bulbs, nor did they provide photographs of burned out bulbs or a copy of a move out condition inspection report showing that bulbs were burned out at the end of the tenancy. As the tenant could not recall bulbs having been burned out, I find that there is insufficient evidence to show that bulbs required replacing or the amount spent to do so. I therefore dismiss the claim for the cost of bulbs.

As the landlords have been just partially successful in their claim, I find that they should recover \$25.00, which is one half of the \$50.00 filing fee paid to bring their application.

In summary, the landlords have been successful as follows:

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|------------------------|-----------------|
| Utilities | \$210.19 |
| Lawn care and sweeping | \$ 70.00 |
| Filing fee | \$ 25.00 |
| Total: | \$305.19 |

Conclusion

The tenant's claim is dismissed. The landlords have proven entitlement to an award of \$305.19 and I order them to deduct that sum from the \$792.00 they have withheld from the security deposit and to return the balance of \$486.81 to the tenant forthwith. I grant the tenant a monetary order under section 67 for \$486.81. This order may be filed in the Small Claims Division of the Provincial Court 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: October 11, 2013

Residential Tenancy Branch

