



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlords and an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlords applied on July 11, 2014 for:

1. A Monetary Order for compensation – Section 67;
2. An Order to retain the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants applied on August 1, 2014 for:

1. An Order for the return of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to return of the security deposit?

Background and Evidence

The tenancy started on November 1, 2012 and ended on June 30, 2014. At the outset of the tenancy the Landlord collected \$925.00 as a security deposit and \$925.00 as a pet deposit. The Parties mutually conducted a move in inspection on October 30, 2014 and completed a report with a copy provided to the Tenant. Although the Parties

conducted a move-out inspection, no report was completed as the Parties did not reach agreement on the damages.

The Landlord states that the Tenants caused damage to the unit and claim as follows:

- \$2,185.26 estimated costs to repair interior damage;
- \$400.00 estimated costs to replace a tree;
- \$371.00 and \$169.00 estimated costs to repair a pond and waterfall;
- \$100.00 for Landlord's time to drain and clean the hot tub; and
- \$50.00 estimated cost of seed for the lawn.

The Landlord states that the costs to repair the interior, replace the tree, repair the pond and seed the lawn were not incurred as the repairs were not done. The Landlord states that the work that was required was taken off the proceeds of the sale of the house.

The Landlord states that house was sold on May 18, 2014 with possession date on August 1, 2014.

The Tenant denies any of the damages claimed and disputes the costs claimed. The Tenant states that the hot tub was left full as this is how they received it at the onset of the tenancy and there were no provisions in relation to the hot tub in the tenancy agreement. The Tenant claims return of double the security deposit.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

As the Landlord sold the house prior to the end of the tenancy and did not make the repairs to the interior, the tree, the pond and the lawn, I find that the Landlord has not

substantiated that costs were incurred or that the Landlord suffered any losses in relation to these claims. Based on the undisputed evidence of the Tenant that the hot tub was not empty and therefore not clean at their move-in, I find that the Landlord has not substantiated any damage or loss that was not pre-existing. As none of the claims have been substantiated, I dismiss the Landlord's application.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Landlord made its application within 15 days of the end of the tenancy, I find that the Tenants are not entitled to return of double the security deposit. As the Landlords' claims have been dismissed, I find that the Tenants are entitled to return of the combined pet and security deposit of **\$1,850.00** plus zero interest. The Tenants are also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,900.00**.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$1,900.00**. If necessary, this order may be filed in the Small Claims 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: December 22, 2014

Residential Tenancy Branch

