



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARDENT PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNSD, FF,

Introduction

This hearing convened as a result of cross applications. In the Landlord's Application for Dispute Resolution they sought a Monetary Order for damage to the rental unit, to retain the security deposit and to recover the filing fee. The Tenant sought return of his security deposit a Monetary Order for compensation for half a month's rent for loss of quiet enjoyment of the rental unit and to recover the filing fee.

Both parties appeared at the hearing. The Tenant was also assisted by F.H., who provided language support. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Should the Tenant be entitled to return of his security deposit and monetary compensation from the Landlord?
3. Should either party be entitled to recover the fee paid to file their application?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement dated September 19, 2013 which indicated rent was payable in the amount of \$1,400.00 per month on the 1st of the month. The Tenants also paid a security deposit in the amount of \$700.00 on September 19, 2013.

Clause 17 of the tenancy agreement provides as follows:

17. Lawn Care & Snow Removal: The Tenant shall maintain outside work of the premises. If required as indicated, tenant will cut and water any lawn, shrubs, trees and landscaping...In the event that the tenant does not maintain yard/snow care to a reasonable standard, the landlord will notify the tenant in writing of the deficiencies. If the yard/snow care remains unkempt following a period of 72 hours from the issuance of the deficiency notice, the landlord will have the yard care brought up to a reasonable standard and charge the tenant for necessary work.

Clause 24 of the tenancy agreement, "Move out Cleaning Requirements" provides as follows:

Exterior

1. Tenants are to ensure no debris of any kind or yard rubbish is left on the property.
2. If the tenants are responsible for yard maintenance it is required that the yard is kept up and left in a tidy manner for the turnover in tenancy.

...

The Landlord provided written submissions in which they claimed that in June of 2014 a representative of the property management company drove by the home to check on the yard and observed that the yard maintenance had declined significantly. The written submissions make reference to a letter sent to the Tenants regarding the condition of the landscaping (notably, this letter was dated June 25, 2013, which presumably was erroneously dated). The Landlord also submitted photos of the exterior of the rental unit dated June 2014, which showed the condition of the property at that time.

The Tenants, in their written submissions, claimed that they mowed the lawn in response to the letter received by the Landlord. The Tenant testified that he did not

tend to pruning the blackberry bushes as he did not know how to cut blackberries. He also stated that he did not believe it was his responsibility to water the rhododendron, as he did not know that he had to water "trees".

The Tenant submitted a letter dated September 8, 2014 wherein he wrote that on July 17, 2014 a water pipe broke and caused damage to the rental unit. He claimed that for the first 5 days, there were up to 6 workers inside the house at a time, tearing down two walls and the floors with fans and dehumidifiers. He also claimed that his family could not be in the house during the day due to the noise and dust and that this also affected their sleeping. The Tenant said that the Landlord asked them to move out for 5 days while the insulation and drywall were replace and at this time the Tenant asked to terminate his tenancy agreement.

Introduced in evidence by the Tenants was a letter dated July 22, 2014 from the property manager regarding the restoration repairs needed due to the damage that was caused by a pipe leaking behind the wall of the main bathroom. This letter further informs the Tenants that the work will take approximately four to six weeks. Also introduced in evidence by the Tenants was a further letter, also dated July 22, 2014 and from the property manager offering to reduce the Tenants rent by the amount of time they were not able to occupy the rental unit.

In the Landlord's written submissions, they claim that after the first five days of remediation, the Tenants refused the workers access to the rental unit and that the work did not continue until after the Tenants moved out.

Also introduced in evidence was a Mutual Agreement to End a Tenancy dated July 21, 2014 and which provided that the Tenants agreed to vacate the rental unit by 8:30 a.m. on August 15, 2014.

The Landlords submitted in evidence a copy of the Move Out: Condition Inspection Report dated August 14, 2014 and which indicated the following deficiencies:

- Oven dirty/outside Dt [Dirty]
- Wall over fireplace black soot
- Black soot on fireplace
- Baseboards [Dirty]
- Bathroom- ensuite:
- Shower dirty
- Water streaks

- Blinds [Dirty]

[Reproduced as Written]

The Landlord wrote on the Move Out Condition Inspection Report that they wished to deduct \$450.00 from the security deposit for professional cleaning and landscaping. The Landlord also noted that the "Tenant was present refused to sign".

The Landlord also submitted photos of the rental unit taken at the same time as the completion of the Move Out Condition Inspection Report and confirm the condition of the property at that time.

The Tenants' forwarding address was noted on the Move out Condition Inspection Report. The Tenant confirmed he refused to sign the Move out Condition Inspection Report because he did not agree to the \$450.00 deduction requested by the Landlord.

At the hearing, the Landlord sought to retain the full security deposit of \$700.00. B.K. testified that the professional cleaners were hired to clean the rental unit, and introduced an invoice for \$206.59 for this expense. B.K. further testified that the property owner spent a minimum of 10 hours working on the yard after the Tenants moved out and introduced a photo of the yard waste which resulted from this work. Also submitted in evidence was an invoice for \$126.00 for yard waste removal.

The Landlord sought to retain the balance of the security deposit, namely \$332.59 to compensate the Landlord for the time he spent bringing the landscaping back to its original condition. In the Landlord's written submissions, they indicated that they were very careful not to include any cleaning costs which may have been related to the remediation, and that the amounts claimed only related to cleaning required as a result of the Tenants' failure to clean the rental unit upon vacating.

In response to the Landlord's request to retain the security deposit in its entirety, as well as the evidence filed, the Tenant testified as follows:

1. He agreed that they did not clean the washer and dryer and that the photos submitted by the Landlord depicted the condition of the washer and dryer when he moved out.
2. His family did not use the oven as it uses too much energy, and that instead they used a small toaster oven.

3. The Landlord did not take photos of the fireplace when he moved in, and that the soot was not unreasonable.
4. Some of the dirt and dust may have been the result of the construction that was going on.
5. He mowed the lawn as requested, but did not cut the blackberries as he did not know how to do so, did not realize he needed to water the rhododendron and had difficulty dealing with other landscaping due to the steep conditions of the property.

The Tenant requested the return of his security deposit in the amount of \$700.00 as well as half a month's rent, in the amount of \$700.00, as compensation for the disruption caused by the remediation.

Analysis

Section 21 of the *Residential Tenancy Regulation* provides as follows:

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.

While the Tenant refused to sign the Move Out Condition Inspection Report, he did not provide any evidence to dispute the specific contents of the Report.

The Landlord also submitted photos of the rental unit at the time the Tenants vacated which show the condition of the rental unit. I accept the Landlords' evidence as to the condition of the rental unit at the end of the Tenancy.

Clause 17 of the tenancy agreement specifically provided that the Tenants were responsible for cutting and watering the lawn, shrubs, trees and landscaping. This clause also provided that the Tenants would be responsible for the cost to bring the landscaping to a "reasonable standard".

Clause 24 further stipulated that the Tenants would be responsible for yard maintenance when vacating the rental unit and ensuring the yard is left in a "tidy manner". While the terms "reasonable standard" and "tidy manner" are certainly subjective, the Tenants failed to dispute the Landlords' claim that extensive yard work

was required when they vacated the rental unit. The photos depicting the yard waste removed by the Landlord support a finding that the Tenants did not fulfill their responsibility to maintain the yard as agreed.

For the above reasons, and pursuant to sections 67 and 38 of the Act, I grant the Landlord's request to retain the \$700.00 security deposit.

The parties disagreed as to the extent of the disruption to the Tenants as a result of the remediation. The Tenants claimed that the work began after the pipe broke on July 17, 2014 and continued until they moved out. The Landlord claimed that the Tenants only permitted the workers access to the property for five days after which they refused them access.

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 Tenants had the burden of proving their claim for compensation in the amount of half a month's rent.

I accept that the Tenants were asked to vacate the rental unit for five days and that the proposed remediation was expected to take four to six weeks. The Tenants refused to vacate and instead negotiated a mutual end to tenancy.

The Landlord, in their letter dated July 22, 2014, offered to compensate the Tenants by way of a rent reduction for the period of time that they were not able to occupy the property due to the repairs.

Although the Tenants refused to vacate, and the parties disagree as to the number of days the remediation efforts occurred, I find that the remediation inconvenienced and disturbed the Tenants and thereby negatively affected their right to quiet enjoyment for the five days the remediation crew were in the rental unit.

Pursuant to section 67, I award the Tenants the sum of \$230.14 and grant them a Monetary Order for this sum. This Order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As success was divided, I dismiss each parties' claim for recovery of the fee paid to file their applications.

Conclusion

The Landlords application to retain the \$700.00 security deposit is granted. The Tenants Application for return of the security deposit is dismissed. The Tenants Application for a Monetary Order for compensation for loss of quiet enjoyment is granted and I award them the sum of \$230.14 representing five days. As success was divided, neither party shall be entitled to recover the fee paid to file their respective applications.

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: April 01, 2015

Residential Tenancy Branch

