



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, MNDC, FF

Introduction

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

The Landlord applied on October 24, 2014 for:

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

The Tenant applied on June 5, 2015 for:

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

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

Preliminary Matters

The original hearing held June 19, 2015 was adjourned and in the Interim Decision dated June 19, 2015 the Tenant’s claim for compensation was dismissed with leave to reapply.

Prior to the reconvened hearing the Landlord submitted an evidence package indicating an increased claim amount than set out in the application. The Landlord did not amend the application.

Rule 2.2 of the Residential Tenancy Branch Rules of Procedure provides that claims are limited to what is stated in the application. As the Landlord has not amended the application to increase the amount being claimed, I find that the Landlord is restricted to the amount set out in the application.

The Tenant states that digital evidence consisting of photos was sent by registered mail to the Landlord and that it was returned unclaimed. The Tenant provided the tracking information for the mail. The Tenant confirmed receiving the Landlord's evidence package. The RTB Rules require that evidence intended to be relied upon by a party must be served to the other party with that evidence. Given the tracking evidence I find on a balance of probabilities that the Tenant provided a copy of the evidence to the Landlord as required and that it may therefore be considered.

At the onset of the hearing the Parties were asked to identify any person who was attending the hearing with them. The Tenants indicated that it was only the two of them. During the hearing the Tenant asked that third person who was present at the conference call be called to provide witness evidence to address one of the claims. As this person was present for the presentation of the evidence of that claim I did not allow the witness testimony.

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 May 1, 2014 on a fixed term to end April 30, 2015. The Parties entered into a mutual agreement to end the tenancy on September 30, 2014. At the

outset of the tenancy the Landlord collected \$1,200.00 as a security deposit and \$1,200.00 as a pet deposit. The Parties mutually conducted a move-in inspection and a report was completed.

The Landlord states that a first date for a move-out inspection on October 1, 2014 was accepted by the Tenant however the Tenant was not yet moved out of the unit was unable to move its car due to a car fire. The Landlord states that the Tenant had about 4 or 5 boxes inside the unit and several outside. The Parties agreed to meet again on October 5, 2014 however the Landlord had to cancel. The Parties agreed to meet again on October 10, 2014 and the Tenant had to cancel. The Parties agreed to meet on October 11, 2014 and the Tenant texted the Landlord that she would be late. After waiting for approximately another half hour the Landlord left for other business. The Landlord states that during this time the Landlord had already started working on the outdoor maintenance. The Landlord states that the inspection was completed by the Landlord on October 11, 2014 and that a copy was sent to the Tenant. The Landlord states that the Tenant's unit had been rented for October 15, 2015 occupancy. The Landlord also states that the lower unit had been rented for October 30, 2015.

The Tenant states that by September 30, 2014 all the furniture had been moved out of the unit but due to a fire in the car the Tenant was unable to complete the move. The Tenant states that the Landlord did not offer any meeting for October 10, 2014 and that she arrived approximately an hour late for the meeting on October 11, 2014 and the Landlord was gone. The Tenant states that the Landlord did not make any other offer to inspect the unit.

The Landlord states that the Tenant damaged the septic system. The Landlord states that a service of the system on September 30, 2014 found the pump was plugged with feminine products. The service repair company told the Landlord that the septic system also required servicing and another company completed this servicing. The Landlord states that the system was last serviced in September 2013. The Landlord states that the Tenant was given instructions at the beginning of the tenancy on the use of the

septic system and to not dispose of feminine products and condoms in the toilet. The Landlord states that during the tenancy the Tenant reported no problems with the system.

The Tenant states that the Landlord said nothing about the toilet or the septic system and never said anything about not being able to flush feminine products. The Tenant states that she did report toilet problems that were present at the onset. The Tenant states that an odd smell came from the toilet and that the Landlord sent a repair person and that a new toilet was installed in August 2014. The Tenant states that she experienced no problems after this.

The Landlord states that the tenancy agreement required the Tenant to maintain the grounds of the unit and deck by watering and weeding the plants. The Landlord states that the Tenant neglected several plants which either died or were damaged by the neglect. The Landlord provided photos of 3 potted plants and states that there were several more similar dead or damaged plants. The Landlord states that the Tenant was asked to leave the yard maintained at the end of the tenancy and that as the Tenant failed to do this, the Landlord had to both hire a landscaper and contribute to the work on the yard. The Landlord claims \$350.00 to replace 7 dead flowering shrubs and trees. The Landlord did not provide an invoice.

The Tenant states that the plants were all alive and flowering over the summer and that the Tenants photos show the tree with foliage and the plants with green leaves. The Tenant states that the Landlord's photos are small and black and white. The Tenant states that the agreement was only to water the plants and that this was done. The Tenant states that they only had potted plants on a patio and that they were regularly watered. The Tenant states that by October flowers can be expected to be gone. The Tenant states that there was no lawn or landscaping and that the area behind the house was a wooded side of the mountain and not the Tenant's responsibility.

The Landlord states that the lighting for the yard also required repair and replacement as the Tenant had earlier backed a car onto the lighting by the common driveway. The Landlord states that the lower tenant informed the Landlord of numerous vehicles in the driveway and of witnessing one of those vehicles back into the lighting. The Landlord states that the damage was noted on the move-out report.

The Tenant states that no car was backed into any lighting and has no idea who might have done so. The Tenant states that no description of any vehicle was provided. The Tenant states that the lower tenant's witness letter is not dated or signed and there was no way for the Tenant to contact this person

The Landlord states that the Tenant left the unit unclean and claims \$800.00. The Landlord states that garbage was left in the unit and on the deck and that the oven cooktop, 10 years of age, was unclean. The Landlord states that this amount includes cleaning of the pool. The Landlord provided photos. The Tenant states that no garbage was left, that professional cleaners cleaned the unit on September 30, 2014 and that the entire unit including the appliances was cleaned. The Tenant provided photos and states that the photos were taken on October 11, 2014 when the Landlord was not present for the inspection. The Tenant states that the pool was not used all summer and that the water was murky. The Tenant states that the Landlord told her that the pump was turned off due to repairs being made to the deck. The Tenant states that after the pool was cleaned a couple of times but not at the end of the tenancy due to the non-working pump.

The Landlord state that the Tenants left walls of 4 rooms damaged by only patching areas. The Landlord states that the Tenants failed to sand and paint the areas. The Landlord does not know the size of the holes patched. The Landlord states that all the walls that were patched required paint. The Landlord states that the unit had fresh paint at the start of the tenancy and that there were no restrictions on the Tenant hanging pictures on walls. The Landlord claims \$650.00 for costs to paint the walls.

The Tenant states that the Landlord's contractor was hired to patch the walls and that they were sanded. The Tenant states that only one wall was patches by the Tenant as the rest of the walls had the Landlord's items. The Tenant states that she did offer to touch up and repaint but the Landlord wanted it to be done professionally so refused the Tenant's offer. The Tenant states that when the company identified on the Landlord's paint invoice was called by the Tenant the person who answered said the company was no longer in business and had not been in business since the previous year and did not work on the Landlord's property in October 2014. The Tenant identified this person by a first name. The Landlord states that the company did the work and was paid cash on October 18, 2014.

The Landlord states that the dishwasher was damaged by the Tenant. The Landlord states that broken glass caused the motor to malfunction. The Landlord states that the Tenant reported that the dishwasher was not draining on October 1, 2014. The Landlord states that upon inspection by a third party it was determined that it would cost more to repair than to replace. The Landlord states that the dishwasher was likely 7 years old and was replaced with a used dishwasher purchased for \$100.00. The Landlord claims this amount. The landlord states that the Tenant also damaged the 7 year old dryer as the motor was found burned out. The Landlord states that the lower tenant reported the dryer went constantly from the Tenant's use. The Landlord states that the Tenant did not notify the Landlord of this problem. The Landlord states that the dryer was replaced with a used dryer for \$100.00 and claims this amount. The Landlord states that a fuse for the stove burned out and required replacement. The Landlord claims about \$50.00 for this item. The Landlord claims \$400.00 for the cost of installation and inspections of the appliances by a qualified plumber.

The Tenant states that the dishwasher was working during the tenancy and that about 2 weeks before the end of the tenancy it stopped draining. The Tenant states that the damage may have also been done by the previous tenant. The Tenant states that the invoice sets out only that the motor was not working and there is no mention of cause.

The Tenant denies using the dryer constantly and that use was limited as she is a working professional. The Tenant states that the dryer is shared with the other tenant and that the last time the Tenant went to use the dryer it was not working. The Tenant states that if the dryer were being used as claimed it would have been raised during the tenancy. The Tenant states that there were ongoing electrical problems because of the work being done on the house and that the fuse surged the last week of the tenancy and was reported to the Landlord.

Analysis

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. Section 36(2) of the Act provides that the right of a landlord to claim against a security deposit is extinguished if a landlord has not provided at least 2 opportunities for a move-out inspection.

The Landlord's evidence indicates that four opportunities were provided to the Tenant to attend a move-out inspection however I note that the second opportunity was cancelled by the Landlord and the Tenant disputes that the third opportunity was ever offered. As a result I find that prior to the opportunity on October 11, 2015 the Landlord had only made one offer. The evidence that the Tenant informed the Landlord that she was going to be late on this date is undisputed. There is no evidence from the Landlord indicating that significant reasons existed that stopped the Landlord from waiting for the Tenant or that the Landlord's departure in the circumstances was reasonable. Although the Act only requires a minimum of two opportunities, in the circumstances, I find that the second opportunity was ended by the actions of the Landlord and that the Landlord should have, in the circumstances, reasonably made another offer for the move-out inspection. As the Landlord did not I find that the Landlord failed to provide two

opportunities for the Tenant to attend a move-out inspection and that the Landlord's right to claim against the security deposit was therefore extinguished at the end of the tenancy. As the Landlord's right to claim against the security deposit was extinguished, the Landlord's only option at the end of the tenancy was to return the security deposit. The Landlord was still able to pursue its application. As the Landlord did not return the security deposit I find that the Landlord now must pay double the combined security and pet deposit to the Tenant's. This amounts to **\$4,800.00** ($\$1,200.00 + 1,200.00 \times 2$). As the Tenant's application has had merit only in relation to the security deposit I find that the Tenant is entitled to recovery of half the filing fee in the amount of **\$50.00** for a total entitlement of **\$4,850.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. The Landlord's evidence is that the Tenant was informed about the use and care of the septic system and I note that the tenancy agreement includes a section in the addendum in relation to the use of the system. At a minimum therefore I find that the Tenant knew or ought to have known about restrictions on use and I note that the Tenant did not deny leaving tampons in the system. However, I also note that the system is shared with another unit and nothing in the evidence indicates that the affected pump was damaged solely from the Tenant's unit. I also consider that there is no evidence that the servicing of the septic tank was required as a result of the pump being repaired. I therefore find that the Landlord has only shown that at the most the Tenant contributed to the requirement for the pump repairs and I find that the Landlord is therefore only entitled to half the cost incurred in the amount of **\$121.80** ($\$243.60/2$). I dismiss the claim for the septic tank emptying.

Based on the undisputed evidence that the Tenant was required to maintain the plants and considering the Landlord's photos of three damaged plants, I find that the Landlord has substantiated that three plants were damaged. Given the lack of additional photos showing damage and considering the Tenant's photos I find that the Landlord has not substantiated any greater loss. As the Landlord has made a global claim for a greater

amount of loss and provided no invoice or estimate I can only determine that the Landlord is entitled to a nominal amount of **\$50.00** for the damage to the garden.

The Landlord's evidence of the damage to the lighting is supported only by third party indirect evidence without any contact information. I do not consider this evidence to be of any weight. Given that other persons had use and access to the driveway where the lights are located, I find that the Landlord has not substantiated that the Tenant or the Tenant's guests caused the damage to the lighting. I therefore dismiss this claim.

Given the Tenant photos of the unit I find that the Tenant left the unit reasonably clean. I therefore dismiss the Landlord's claim for the cost of cleaning the unit. The Landlord did not dispute that the pool was without a working pump due to repairs by the Landlord. However even if the Tenants are responsible for the cleaning of the pool in such condition there is no way to determine the portion of cost incurred for the cleaning of the pool. As a result I find that the Landlord has failed to substantiate the costs claimed and I dismiss the claim for cleaning of the pool.

Given the undisputed evidence that the Tenant used the Landlord's contractor to patch the walls, I find that the walls were likely done to a professional standard and the Landlord has no claim in this regard. Considering that the Tenant's offer to paint the walls was refused by the Landlord, I find that the Landlord failed to take reasonable steps to mitigate the costs claimed and I dismiss the claim for damages to the walls.

After considering each Party's evidence in relation to the dishwasher not working and ultimately needing repair I find that the Landlord has substantiated on a balance of probabilities that the Tenant negligently left broken glass in the dishwasher causing it to malfunction. Residential Tenancy Branch Policy Guideline #40 indicates that the useful life of a dishwasher is 10 years. Based on the Landlord's evidence that the dishwasher was 7 years old and was replaced by a used dishwasher, I find that the Landlord has substantiated a comparable loss and that the Landlord is entitled to its claims of

\$100.00. The total entitlement of the Landlord is **\$271.80**. As the Landlord's application had minimal success I decline to award recovery of the filing fee.

Deducting the Landlord's entitlement of **\$271.80** from the Tenant's entitlement of **\$4,850.00** leaves **\$4,578.20** owed by the Landlord to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$4,578.20**. 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: September 11, 2015

Residential Tenancy Branch

