



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

On August 18, 2015, the landlord's application for dispute resolution was heard. The Arbitrator granted the landlord a monetary order.

On September 2, 2015, the tenant made an application for review consideration, which was granted on the basis that they were unable to attend at the original hearing because of circumstances that could not be anticipated and were beyond their control.

The Arbitrator ordered the parties to participate in a new hearing, and the original decision and order was suspended. The Arbitrator at the new hearing may confirm, vary, or set aside the original decision.

This new hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for damage to the unit, to keep all or part of the security deposit and to recover the filing fee from the tenant.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Is the landlord entitled to a monetary order for damages to the rental unit?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The tenancy began on July 1, 2013. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 was paid by the tenant. The tenancy ended on September 1, 2014.

The landlord claims as follows:

a.	Damaged wall	\$ 156.32
b.	Damaged curtain	\$ 55.98
c.	Garden	\$ 400.00
d.	Filing fee	\$ 50.00
	Total claimed	\$ 662.30

Damaged wall

At the outset of the hearing the tenant acknowledged that they caused damage to the wall and is not disputing this portion of the landlord's claim.

Damaged curtain

The landlord testified that the tenant caused damage to the curtain by ripping a hole in the top portion. Filed in evidence is a photograph which shows a small rip in the curtain.

The tenant testified that they never caused any damage to the curtain.

Garden

The landlord testified that the tenant did not maintain the yard or the garden that was in the front and the back of the house. The landlord stated that the tenant built a huge compost box at the back of yard against the fence using their wood, which they did not have permission to use. The landlord stated that the compost box was built without their consent and it was placed over a large raspberry batch, destroying the batch.

The landlord testified that they had to remove the compost box and garbage that was in the box and around the property and repair the gardens and the lawn. Filed in evidence are before and after picture of the gardens and lawn.

Filed in support of the landlord are two witnesses' statements, which support the yard was not maintained by the tenant.

The tenant testified that they did not use the landlord's wood to build the compost box. The tenant stated that they told the landlord that they were building a compost box and the landlord thought it was a good idea. The tenant stated that they did not remove the

compost box at the end of the tenancy. The tenant stated that the receipt filed by the landlord is dated June 2015, almost a year after the tenancy ended.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

Leaving the rental unit at the end of a tenancy

37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets.

Damaged wall

The tenant does not dispute that they caused damage to the wall. I find the tenant breached the Act when they failed to make the repair prior to the tenancy ending and this caused losses to the landlord. Therefore, I find the landlord is entitled to recover the amount of **\$156.32**.

Damaged curtain

In this case, both parties have provided a different version. The landlord testified that the damage to the curtain was caused by the tenant. The tenant denied they caused any damage to the curtain.

Although the landlord has provided a photograph showing a small hole in the curtain, which likely could have been successfully repaired, rather than replaced. However, the landlord has provided no evidence of the condition of the curtain at the start of the tenancy, such as a move-in condition inspection report. As a result, I am unable to determine if the damage was caused by the tenant. Therefore, I dismiss this portion of the landlord's claim.

Garden

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed or adding items such as a large compost box over an existing garden.

Generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

In this case, the tenant built a large compost box at the back of the property damaging the landlord's raspberry patch. The tenant has provided no evidence that they received the landlord's prior consent to change the landscape of the property. I find the tenant breached the Act, when failed to return the landscaping back to its original condition, by removing the compost box and restoring the raspberry patch that was damaged as a result of their actions.

However, I am not satisfied that the tenant was responsible to maintain the garden beds as neither party provided a written tenancy agreement which would set out the defined terms of the tenancy agreement.

Further, I have reviewed the receipts submitted as evidence by the landlord, which they are dated almost 10 months after the tenancy has ended, which I find is an unreasonable amount of time, as the premises could have deteriorated further during this time period.

Therefore, as the receipt indicated 10 hours of work was required to be completed, I find it appropriate to grant the landlord half the amount claimed. As at least 4 hours was to weed and prepare the garden beds, which I am not satisfied the tenant was responsible to maintain. Therefore, I granted the landlord the amount of **\$200.00**.

I find that the landlord has established a total monetary claim of **\$406.32** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the amount of \$406.32 from the tenant's security deposit in full satisfaction of the claim and I grant the tenant an order under section 67 of the Act for the balance due of **\$193.68**.

Should the landlord fail to return the balance due to the tenant. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

In light of the above, I set aside the Decision and Order made on August 18, 2015 and suspended on September 2015.

Conclusion

The Decision and Order made on August 18, 2015, are set aside and have no force or effect.

The landlord is granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim and the tenant is granted a formal order for the balance due of their security deposit.

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: November 18, 2015

Residential Tenancy Branch

