Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on June 29, 2015. The Landlord filed seeking an order to keep the pet and security deposits to apply against her monetary claim and to recover the cost of the filing fee from the Tenants.

The hearing was conducted via teleconference and was attended by the Landlord, her assistant, and the Tenant T.F. Each person gave affirmed testimony and the Tenant confirmed that he would be representing the other Tenant, A.L. in her absence. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On July 8, 2015 the Landlord submitted 49 pages of evidence to the Residential Tenancy Branch (RTB). The Landlord testified that she served the Tenants with copies of the same documents and photographs that she had served the RTB. The Tenant acknowledged receipt of those documents. As such, I accepted the aforementioned documents as evidence for these proceedings.

The Tenant testified that although they received the aforementioned documents, they were never served a copy of the Landlord's application for Dispute Resolution. After a brief discussion the Tenant stated that they had suspected the Landlord applied to keep their deposits based on what was discussed during their move out inspection. As such, the Tenant stated that he wished to proceed with this hearing as scheduled as they were prepared to proceed to present their evidence.

On November 24, 2015, the Tenants submitted 19 pages of evidence to the Residential Tenancy Branch. The Tenant affirmed that they served the Landlord with copies of the same documents and photographs that they had served the Residential Tenancy

Branch (RTB). The Landlord acknowledged receipt of those documents. As such, I accepted those documents as evidence for these proceedings.

On December 8, 2015 the Landlord submitted a second page of evidence to the RTB consisting of 6 pages of documents. The Landlord testified that she did not serve the Tenants with copies of these six pages of evidence.

The hearing package contains instructions on evidence and the deadlines to submit evidence, as does the Notice of Hearing provided to the Landlord which states:

> 1. *Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing. Instructions for evidence processing are included in this package. Deadlines are critical.*

Rule of Procedure 3.14 provides that documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the RTB not less than 14 days before the hearing.

Rule of Procedure 3.17 provides that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

To consider documentary evidence that was not served upon the other party would be a breach of the principles of natural justice. Therefore, as the Landlord's 6 pages of evidence were not served upon the Tenants in accordance with Rule of Procedure 3.14, I declined to consider that documentary evidence, pursuant to Rule 3.17. I did however consider the Landlord's oral testimony regarding that evidence.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1) Has the Landlord proven entitlement to monetary compensation?
2) If so, should the Landlord be issued an Order to retain the pet and security deposits?

Background and Evidence

The Tenants occupied the rental unit on November 1, 2013 based on written fixed term tenancy agreements. The most recent tenancy agreement listed a start date of May 1, 2015 and was scheduled to end on June 30, 2015; at which time the Tenants were required to vacate the property.

Rent of $1,600.00 was payable on the first of each month and on October 1, 2013 the Tenants paid $800.00 as the security deposit. On November 1, 2013 the Tenants paid $800.00 as the pet deposit.

On November 1, 2013 a move in condition inspection report was completed and signed by both parties. On June 19, 2015 the move out inspection was conducted in the presence of both parties. However, the Tenant(s) refused to sign the move out condition inspection report form as they did not agree to what was written on the form.

Copies of the move in and move out condition report forms were submitted into evidence by the Landlord. On November 1, 2013 the Tenant signed section Z (2) on page 3 of the move in report which states as follows:

> *I [Tenant's name] agree to the following deductions from my security and/or pet damage deposit:*
>
> *Security Deposit: $800.;00 Pet Damage Deposit $800.00*
> *Date (dd/mm/yy) _____ Signature of Tenant [Signature of Tenant]*
>
> [Reproduced as written]

The Tenants paid the full month's rent for June 2015. The Tenants vacated the rental unit and property as of June 3, 2015 and attended the move out inspection on June 19, 2015 at which time full possession of the rental unit and property were returned to the Landlord.

The Landlord submitted a claim for items that she stated were left dirty, damaged, and/or not properly maintained during the Tenancy. The Landlord testified that she was seeking compensation as follows.

The Landlord seeks $760.00 to conduct yard maintenance which was not properly completed by the Tenants. The Landlord argued that such maintenance was required by the tenancy agreement addendum sections 12 and 30 and which state as follows:

> 12. *The Tenant is also responsible for the following utilities and charges: lawn maintenance driveway maintenance including snow removal, waste removal, and septic tank.*
>
> [Reproduced as written]
>
> 30. *Where the Rental Unit has its own garden or grass area which is for the exclusive use of the Tenant and its guests, the Tenant will water, fertilize, weed, cut and otherwise maintain the garden or grass area in a reasonable condition including any trees or shrubs therein.*
>
> [Reproduced as written]

The Landlord argued that dog feces were scattered throughout the yard and there were several patches of lawn that needed to be re-seeded.

The Landlord claimed $355.00 to compensate for the scratches and gouges that were left in the pine wood flooring. The Landlord stated that the floor had been sanded and coated with several coasts of finish in 2011, three years prior to this tenancy. She asserted that at the start of the tenancy there were no scratches or gouges in the floor. The Landlord submitted that she will have to sand down the entire floor and apply up to 3 levels of coating in order to repair the damaged floor.

The Landlord stated that she is claiming $122.00 for costs to clean the chimney. She submitted that the Tenants were required to clean the chimney as per the tenancy agreement addendum section 28 which states as follows:

> 28. *In particular, the Tenant will keep the fixtures in the Property in good order and repair and keep both the electric and wood burning furnaces, including stove pipe, clean. The Tenant will, at Tenant's sole expense, make all required repairs to the plumbing, range, heating apparatus, and electric fixtures whenever damage to such items will have resulted from the Tenant's misuse, waste or neglect or that of the Tenant's employee, family, agent, or visitor.*
>
> [Reproduced as written]

The Landlord argued that she had to unplug the clogged central vacuum system. The Landlord submitted that it took her several hours to unplug the system so she is claiming $139.80 which is equal to the quote she received.

The Landlord seeks $100.00 to replace and repair the two boards of broken white vinyl board fencing. The Landlord submitted that she repaired the fence with the use of boards she had in stock.

The Landlord claimed $200.00 to repair the damage that was caused to the chain link fencing. She argued that she knew the Tenants broke the fence because they found the ash contents of the wood furnace dumped on the other side of this fence.

The Landlord submitted that she has not paid to have the aforementioned items fixed. Rather, she did or will be doing the repair work herself. She stated that she has based the amounts claimed on quotes she had obtained from contractors prior to this hearing.

In support of the items being claimed, the Landlord relied upon the condition inspection report forms as well as her photographic evidence. She stated that her photographs were taken on or around June 19, 2015.

The Tenant disputed all of the items claimed by the Landlord. He relied upon his photographic evidence which he stated was taken between May 28, 2015 and June 3, 2015. He argued that his photographs show the condition they left the yard and the rental unit in at the end of their tenancy. He asserted that he also submitted some photographs that were taken after they moved out, possibility on the day of the move

out inspection on June 19, 2015. He said those photographs support his submissions that they are not responsible for the damages claimed by the Landlord.

The Tenant testified that on several different occasions during his tenancy the Landlord had kept horses on the property. He asserted that the Landlord allowed the horses to roam over the entire property and graze which damaged the yard and left horse manure spread throughout the property. He pointed to a photograph of a metal gate which was used to block off the driveway to keep the horses on the property while they roamed around the entire yard.

The Tenant submitted that they were told by the Landlord at the beginning of their tenancy that the floors were constructed of soft pine which was easy to dent. He argued that they did everything to prevent damaging the floor which included putting felt pads on all of their furniture and they even put up a baby gate so their dog did not go upstairs onto the pine poor. He argued that there were several scratches on the floors at the beginning of the tenancy.

The Tenant confirmed that they had used the fire place / wood furnace during their tenancy and they did not have the chimney cleaned at the end. He argued that cleaning a fireplace chimney was not normally a tenant's responsibility. He asserted that the clause about cleaning the chimney was not included in his first lease addendum and although it was in his second addendum the clause was not specifically pointed out to them.

The Tenant testified that he believed the central vacuum system was plugged prior to the start of their tenancy as it never worked. They did not discuss the issue of the vacuum not working with the Landlord as they had their own hand held vacuum which they chose to use. The Tenant stated that when cleaning the house at the end of the tenancy they emptied the built in vacuum canister that was located in the garage.

The Tenant compared his picture of the white vinyl board fencing, which he said was taken on or around June 3, 2015, with another picture that he said was taken after the Landlord had moved her horse(s) onto on the property. He disputed the Landlord's claim and argued that there was horse hair in the broken fencing which was proof that a horse leaned on the fence and broke it.

The Tenant disputed the claim for repairs to the chain link fence and stated that the fence was not broken; rather, it was simply apart, as displayed in the photographs. He argued that the fence was very old and the fence post was never properly installed as it was simply being supported by a pile of rocks instead of being placed into the ground with concrete. He submitted that the fence had been like that throughout his entire tenancy.

In his final submission the Tenant stated that they lived there for 17 months and fulfilled their area of obligations. They spent 3 days cleaning and although they did not reside at the rental unit after June 3, 2015 they paid the full month's rent for June. The Tenant

asserted that the Landlord had moved her horses, trailer, and a car onto the property prior to them returning full possession of the property to her on June 19, 2015.

The Landlord submitted that the metal gates used to close off the driveway were not at the front of the driveway during the tenancy. She confirmed that she had her horses on the property at different times during the tenancy; however, they were placed in corrals and not allowed to graze on the lawn. She argued that all of the tenancy agreement addendums were exactly the same for each tenancy so the Tenants ought to have known it was their responsibly to have the chimney cleaned at the end of the tenancy.

The Landlord pointed to her picture which displayed the articles that were in the central vacuum system causing it to be plugged. She argued it was hair clips and stuff that were from the Tenant's family as she had never rented the property before this tenancy. She stated the property was previously occupied by her and her adult son and daughter. She argued that she did not move any possessions or the horses onto the property prior to June 19, 2015 but she did park a car on the property.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides in part, as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Residential Tenancy Act states:

> Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The burden to prove a claim for damages rests with the applicant. In this case the Landlord bears the burden of proof for each of the items being claimed.

Section 20(e) of the *Act* stipulates that a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement.

As listed above, the Tenants signed section Z (2) of the move in condition report agreeing to $800.00 being deducted from both their pet and security deposit. As that section of the condition report was signed at the beginning of the tenancy and not at the

end of the tenancy, I find it breaches section 20(e) of the *Act* and is therefore, of no force or effect.

Section 32 (3) of the Act provides that a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 37(2) of the Act provides that when a tenant vacates a rental unit the tenant must leave the rental unit reasonably clean and undamaged except for reasonable wear and tear; and must return all keys to the Landlord.

Section 21 of the Regulations provides that 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.

Regarding the Landlord's claim for yard maintenance I find the Landlord submitted insufficient evidence to prove entitlement to $760.00 as monetary compensation. I make this finding in part as the Landlord did not submit evidence that reflected the condition of yard at the start of the tenancy.

The Landlord relied upon section 30 of the tenancy agreement addendum to support her claim; however, section 30 clearly states that the Tenants are responsible for yard maintenance if "*the Rental Unit has its own garden or grass area which is for the* ***exclusive use of the Tenant and its guests"***. [My emphasis added with bold text and underline.] The undisputed evidence was the Landlord had used the property throughout different times during the tenancy when she boarded her horses on the property. Therefore, in absence of documentary evidence to the contrary, I conclude the Landlord has not proven her claim of $760.00 for yard maintenance, and the claim is dismissed, without leave to reapply.

In response to the claim of $355.00 for materials to sand and seal the pine wood floor, I note that the move in report was completed and signed in the presence of both parties. That condition report included such details as listing "small water damage" in the main bathroom and "ceiling fan unbalanced". Therefore, it is reasonable to conclude that if the parties were noting such deficiencies which many others would consider being small issues, they would have certainly noted more significant damages such as scratches or gouges that were present on the wood floor. Therefore, I accept the Landlord's submission that the floor was not damaged at the outset of this tenancy as such damage was not listed on the move in condition report form.

Notwithstanding the Tenant's submissions that they were told the pine wood floor was a soft floor, I find the Tenants breached sections 32 and 37 of the *act* by leaving the wood floors with some scratches and gouges at the end of the tenancy.

That being said, I find the Landlord provided insufficient evidence to prove the extent of the damage caused to the floor. Although the Landlord submitted several small (3 cm x 4 cm) photographs of the floor printed onto four 8” x 10” sheets. The photographs were hard to review and were scatted amongst photographs of other items. It is unknown if the floor pictures were taken of the same floor damage in the same area. Furthermore, there was no actual description or testimony of exactly where the damaged floor boards were located or how many boards were actually damaged.

Residential Tenancy Policy Guideline 16 states that an Arbitrator may award “nominal damages” which are a minimal award. The Policy Guideline further provides that nominal damages may be awarded where there has been no significant loss and are an affirmation that there has been an infraction of a legal right, with which I agree.

Based on the above, I conclude the Landlord has not provided sufficient evidence to prove a claim for $355.00. However, as stated above, the Tenants have been found to have breached sections 32 and 37 of the *Act* relating to the damaged floor. Therefore, I conclude the Landlord is entitled to nominal damages to help offset at least four hours of her labour costs (4 x $25.00 per hour) for the total amount of **$100.00**, pursuant to section 67 of the *Act.*

Residential Tenancy Policy Guideline 1 clarifies the responsibilities of a landlord and tenant regarding maintenance, cleaning, and repairs of the residential property, in part, as follows:

> *Residential Tenancy Agreements must not include terms that contradict the Legislation. For example, the tenant cannot be required as a condition of tenancy to paint the premises or to maintain and repair appliances provided by the landlord. Such a term of the tenancy agreement would not be enforceable. The tenant may only be required to paint or repair where the work is necessary because of damages for which the tenant is responsible. The landlord and tenant may enter into a separate agreement authorizing the tenant to provide services for compensation or as rent.*

Regarding maintenance and cleaning of the fireplace, furnace, or chimney, Policy Guideline 1 stipulates that the landlord is responsible for cleaning and maintaining the fireplace chimney at appropriate intervals. I agree with this policy as chimney cleaning would fall to the landlord as building maintenance and not within the realms of regular cleaning required of a tenant.

Notwithstanding the Landlord’s submission that the tenancy agreement addendum required the Tenants to clean the chimney, I accept the Tenant’s submission that that clause of the addendum was not specifically discussed with them and that such cleaning would fall to the landlord. As listed above, such a clause in a tenancy agreement would not be enforceable as it pertains to maintenance required to be done by a landlord. Accordingly, I dismiss the $122.00 claimed for chimney cleaning, without leave to reapply.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

Regarding the last three items claimed: the clogged central vacuum; the white board fence; and the chain link fence; none of these items are listed on the condition inspection report form. Therefore, in the presence of the Tenant's disputed testimony and in absence of any other documentary evidence, the Landlord has not proven the condition of the vacuum, white fence, and chain link at the start of this tenancy

I do not accept the Landlord's submission that a picture of a hair tie in a pile of debris allegedly taken from the vacuum system is proof that the Tenants clogged the vacuum system during the tenancy. Furthermore, there was undisputed evidence that the chain link fence was not broken and the Landlord's horses were on the property throughout the tenancy. I accept that the chain link fence was simply apart and the horses could have caused the damage to the white fence. Based on the foregoing, I find the Landlord submitted insufficient evidence to prove these claims for damages and the amounts claimed for unclogging the vacuum and repairing the white and chain link fence are dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **$50.00**, pursuant to section 72(1) of the Act.

Monetary Order – This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenants' security and pet deposits plus interest as follows:

Nominal Damages for the flooring	$ 100.00
Filing Fee	50.00
SUBTOTAL Owed to Landlord	**$ 150.00**
LESS: Pet Deposit $800.00 + Interest $0.00	-800.00
LESS: Security Deposit $800.00 + Interest 0.00	-800.00
Offset amount due to the Tenants	**($1,450.00)**

The Landlord is hereby ordered to return the $1,450.00 balance of the pet and security deposits to the Tenants forthwith.

Conclusion

The Landlord was partially successful with her monetary claim and was awarded $150.00 which was offset against the Tenants' $800.00 security deposit and $800.00 pet deposits. The offset amount left a balance due to the Tenants of $1,450.00, which the Landlord was ordered to pay to the Tenants forthwith.

In the event that the Landlord does not comply with the above Order to return the $1,450.00 deposits to the Tenants forthwith, the Tenants may serve the Landlord the enclosed Monetary Order. This Order is legally binding and may be enforced through Small Claims Court 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 14, 2015

Residential Tenancy Branch