Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlords' application is seeking orders as follows:

1. For a monetary order for damages;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

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

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to monetary compensation for damages?
Is either party entitled to the security deposit?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2014. Rent in the amount of $1,500.00 was payable on the first of each month. The tenants paid a security deposit of $750.00. The tenancy ended on June 30, 2015.

The landlords claim as follows:

a.	Carpet cleaning	$ 60.00
b.	Damage to garden	$ 384.45
c.	Filing fee	$ 50.00
	Total claimed	**$ 494.45**

Carpet cleaning

At the outset of the hearing the tenant indicated that they had previously agreed to pay for the carpet cleaning in the amount requested.

Damage to garden

The landlords testified that at the start of the tenancy the yard, flower gardens and raspberry bushes were in excellent condition. The landlords stated in the fall the tenant was asked to turn the water to the irrigations system off to avoid freezing.

The landlords testified that the tenants did not turn the irrigation system on in the spring, after they were asked to do so by their property manager, as on July 2, 2015, they found the valve was shutoff. The landlords stated no water for the months of May 2015 and June 2015 were used on the lawn or garden and the weather for these two months were often in the high 30.

The landlords testified that the lack of water caused extensive stress and damage to the grass, flowers and 90% of the raspberry plants were destroyed. The landlords seek to recover the cost of the plants in the amount of $384.45.

The tenant testified that they were not responsible for the landlords' gardens. The tenant stated that they have no knowledge or skills when it came to the care of plants and only agreed to rake some leaves in the fall. The tenant stated that the landlord had the yard and the garden maintain at least every two weeks.

The tenant testified that in the fall they turned off the water as requested. The tenant stated that they were never asked by the property manager to turn the water on and they were informed that on May 15, 2015, a company would be attending to inspected the irrigations system and make any necessary repairs. The tenant stated that they accommodated the irrigation company and gave them company access to the crawl

space to turn the water on so they could do the irrigating testing. The tenant stated at no time did they turn the water off or touch the landlords' irrigation system.

The tenant testified that on June 22, 2015, the landlord's sister-in-law also attended and was making adjustments to the irrigation system in the storage shed, which she access without their consent and without notice.

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 landlords have 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.

Carpet cleaning

The tenants agreed that they are responsible for the carpet cleaning. Therefore, I find the landlords are entitled to recover carpet cleaning in the amount of **$60.00**.

Damage to garden

In this case, the tenancy agreement does not contain any terms that the tenants are responsible for the gardens. The irrigation system was inspected and repaired on May 15, 2015, by a company hired by the landlords. I find it would be reasonable to conclude that in order to test the system, that the irrigation company turned the water on, when they accessed the crawl space.

While I accept the landlords evidence that the plants were stressed from the extreme heat and the shortage of water, I find there is no evidence that this was at the fault of the tenants. The tenants were not responsible to maintain the gardens and not responsible to monitor the landlords' irrigation system.

While the landlords alleged the tenants must have turned the water off, I find there is no evidence to support this and it was denied by the tenant.

Further, the landlord's sister in-law attended on June 22, 2015, and adjusted the irrigation system by increasing the water flow, I find if there was no water turned on, it should have been discovered at this point to avoid any further stress to the plants, as the landlord was informed earlier that the grass was very dry.

Further, if the water valve was found to be off by the landlords on July 2, 2015, it is possible that the water was turned off after the irrigation company finished their testing and went undetected or even possibly turned off after the tenants vacated the rental unit as the tap was not checked until July 2, 2015, by the landlords and the tenants had vacated the premises on June 30, 2015.

Based on the above, I find the landlords have failed to prove a violation of the Act, by the tenants. Therefore, I dismiss this portion of the landlords' claim.

As the tenants had agreed to the carpet cleaning prior to the landlords' filing their application, and that is the only amount awarded to the landlords, I decline to award the landlords the cost of the filing fee.

I also decline to ward the tenants the cost of their filing fee, as their application was filed after the landlords.

I find that the landlords have established a total monetary claim of **$60.00** comprised of the above described amount. I order that the landlords retain the amount of $60.00 from the tenants' security deposit and I grant the tenants an order under section 67 of the Act for the balance due of **$690.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court should the landlords fail to comply with my order.

Conclusion

The landlords are granted a monetary order and may keep a portion of the security deposit in full satisfaction of the claim and the tenants are 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: January 14, 2016

Residential Tenancy Branch