# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNSD, MNDC, O, FF

Introduction

The landlords apply for a monetary award for the cost of yard work after the tenants vacated the premises and for recover of an amount paid under a settlement agreement and an amount awarded to the tenants in a previous dispute resolution hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the tenants are responsible for the cost of yard maintenance incurred by the landlords? Can the settlement payment or previous award be considered at this arbitration?

Background and Evidence

The rental unit is a house on a suburban lot. The tenancy started in April 2013. The last monthly rent was $1230.00. At the end of the tenancy the landlords held a $600.00 security deposit.

There is a written tenancy agreement. Neither side to this dispute submitted a copy of it.

The landlord Ms. W. says that the tenancy agreement contained a term that the tenants would maintain the yard and return it to the same state as they found it at the start of the tenancy.

In or about May 2015 the landlords issued to the tenants a two month Notice to End Tenancy. Apparently the ground for the Notice was that the landlords intended to demolish or renovate the home. That Notice was soon supplanted by a second two month Notice alleging that the landlords intended to occupy the home.

Within a short time the landlords issued a third Notice; a one month Notice to End Tenancy for cause.

The tenants applied to cancel all three Notices. That matter came on for hearing July 15, 2015 and was settled at that hearing (related file number noted on cover page of this decision). The arbitrator recorded the settlement in her decision. The tenants would vacate the premises by the end of September 2015. The landlords would pay the tenants $1530.00 as incentive. The landlords were given an order of possession for September 30, 2015. The tenants were given a monetary order against the landlords for $1530.00. It was agreed that the tenants could move out earlier than September 30 and that if they did then the rent would be adjusted accordingly.

The tenants moved out at the end of July. It was indicated at this hearing that the landlords paid the $1530.00.

The landlord Mr. W. and the tenants conducted a move out inspection at the end of July. A condition inspection report was prepared and a forwarding address in writing was provided. Neither side submitted a copy of that report. It is agreed that the Mr. W. raised no complaints about the state of the premises or particularly, the yard. The tenants did not authorize the landlords to retain any portion of the security deposit.

The landlords returned only part of the deposit money: $350.00, claiming that $250.00 of yard work had been required in order to bring the yard up to a reasonable standard.

Shortly after, on August 18, 2015, the tenants applied for return of the balance of their deposit money, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the "*RTA*") and for compensation equivalent to two months' rent pursuant to s. 51(2) of the *RTA*, claiming that the landlords had failed to use the property as they said they would in the two month Notices to End Tenancy (it appears they had sold the property).

That matter came on for hearing February 22, 2016 (related file noted on cover page of this decision). The landlords, though duly served, decided not to attend that hearing.

Based on the only evidence before him; the evidence of the tenants, the Arbitrator awarded the tenants double the deposit money (less the $350.00 that had been paid) and awarded them the equivalent of two months' rent pursuant to s. 51(2). The tenants came away with a total award of $3700.00, plus recover of their filing fee, less the $350.00 of the deposit money the landlords had already returned.

It appears that the Arbitrator was aware of the fact of the settlement reached the previous August. It does not appear that he was given or referred to the written decision recording that settlement. I say this because his decision shows that he was under the impression that the settlement was that the tenancy would end July 31, 2015, when, in fact, the agreement set out in the decision and, indeed, the order of possession, were for a tenancy ending September 30, 2015.

After receiving that decision the landlords applied for a review in accordance with Part 5 of Division 2 of the *RTA*. The ground for review was the allegation that the tenants had obtained the decision by fraud. The review was refused. The Arbitrator's decision of February 22, 2016 was upheld.

At this hearing the landlord Ms. W. adduced five photos of various planters and shrubbery around the home, saying that it was overgrown and had not been weeded. She adduces an invoice for $250.00 from a landscaper. It does not detail the work done.

The tenant Ms. R. says that the landlord Mr. W. had no complaints about the yard when they conducted the move out inspection and nothing was said of it in the condition report.

In response, the landlord Ms. W. says she indicated to Mr. W. to conduct the inspection with the tenants and "just OK it."

Analysis

As stated at hearing, a previous Arbitrator has awarded the tenants $3700.00 and a subsequent Arbitrator like me does not have the authority to question that decision, nor the review of that decision. The landlords' option at this point is to have the previous decision and/or the review decision reviewed by the Supreme Court pursuant to the *Judicial Review Procedure Act*, RSBC 1996, c. 241.

In regard to the landlords' claim for yard work, I find that I must dismiss it.

Section 6(3)(c) of the *RTA* says that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. The yard work term described by the landlord Ms. W. is vague at bes,t regarding what is required of the tenants under the tenancy agreement.. Without knowing the actual wording of the term written in the tenancy agreement, it cannot be said to express the tenants' obligations in a manner that clearly communicates them.

In any event, the proper time for raising concerns about the state of the yard is at the move out inspection. The inspection is required under the *RTA* so that concerns can be raised at that time and, hopefully dealt with at that time. A landlord's silence about a concern is equivalent to acquiescence. As well, a landlord's silence about a concern puts a tenant in very difficult position should the landlord later make a claim; as in this case. The tenants have lost access to the premises and the opportunity to obtain or preserve evidence such as photos of yard or estimates for work.

Additionally, the landscaper's bill of $250.00 does not appear to reasonably relate to the work that would be required to repair the items of complaint in the landlords' photos, namely, the pulling of two weeds, the pulling of the beginnings of a blackberry bush and the trimming of two shrubs.

I appreciate that the landlords feel that they have not been dealt with fairly in the last dispute decision, but it would also be unfair to award them recovery of the landscaper's cost in the circumstances presented in this dispute resolution.

Conclusion

The landlords' claim must be dismissed.

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: July 15, 2016

Residential Tenancy Branch