



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants

While both parties had submitted documentary and photographic evidence I noted during the hearing that I could not find the last page of the tenants' evidence (a photograph). The landlords confirmed that they had received the photograph. I ordered the tenants to re-submit the photograph via fax and the tenants did so. I have considered the photograph as evidence in this decision, as the landlord had received it and could, if they chose, provide evidence and/or testimony in response to the photograph.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for compensation for damage to and cleaning of the residential property; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlords submitted the following relevant documents into evidence:

- A copy of a tenancy agreement signed by the parties on October 8, 2014 for a 1 year fixed term tenancy beginning on November 1, 2014 that converted to a month to month tenancy on November 1, 2015 for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$700.00 and a pet damage deposit of \$700.00 paid. The parties agreed the \$700.00 pet damage deposit was returned by the landlords;

- A copy of a Condition Inspection Report completed on October 26, 2014 for the move in inspection and December 4, 2015 for the move out inspection. While the document is signed by both one landlord and one tenant on December 4, 2015 I note the tenant has not signed the document agreeing or disagreeing to the condition as recorded.

The landlords submitted that during the tenancy the tenants caused damage to the oven and roman shades in the rental unit and failed to clean the rental unit and maintain the yard in compliance with the tenancy agreement.

The landlords testified that the bottom of the oven was damaged. The landlord alleged the tenants must have tried to clean something that had burned on by using a knife. The landlord seeks \$400.00 as compensation, based on a portion of the \$1,400.00 oven replacement value. The tenants submitted the oven contained a removable drip pan that was covering the bottom of the oven when they completed the move in inspection and there is no record of its condition at the start of the tenancy.

The landlords seek compensation in the amount of \$1,281.70 for the replacement of roman blinds. The landlords submitted the tenants had not wiped the window sills, as a result the blinds had shrunk and become mildewed; and that the cords had been cut. The landlords testified the blinds were approximately 10 years.

As part of their claim the landlords seek \$11.18 for the replacement of an interior light bulb with an appropriate exterior lightbulb. The tenants responded by stating the lightbulb in question is in a fixture that is protected from the elements; the type of bulb can be used safely outside; and that there was no need for the landlord to replace the bulb.

The landlords seek \$157.50 for 10.5 hours of labour for cleaning of the interior of the rental unit. In support of the claim for interior cleaning the landlords submitted the Condition Inspection Report and some photographs of interior spaces requiring cleaning.

The tenants submitted that 10.5 hours of cleaning seems "preposterous". The tenants believe the specific areas requiring cleaning were grungy due to age and nothing they could do about cleaning them anymore.

The bulk of the landlords' claim is in relation to work required in the yard at the end of the tenancy. I note that the tenancy agreement submitted into evidence contains an addendum with the following 2 clauses relevant to the landlords' claim:

- Tenant must maintain yard and lawn; and
- No major pruning or trimming of trees and shrubs by tenant without notifying landlord for approval and/or assistance.

The landlords submit that the tenants failed to maintain the property and seek compensation for yard maintenance and the replacement of two heather plants. Furthermore, the landlords state that as a direct result of the tenants' dog the lawn need to restoration seek the following amounts for yard work:

| Description | Amount |
|---|-------------------|
| Lawn – grass seed | \$121.49 |
| Lawn – moss control and fertilizer | \$87.39 |
| Lawn – labour – prep and re-seed lawn (10 hours @ \$15.00 per hour) | \$150.00 |
| Lawn – soil | \$194.00 |
| Sub-total – lawn | \$552.88 |
| Yard maintenance – labour (36 hours @ \$15.00 per hour) | \$540.00 |
| Heather replacement | \$36.94 |
| Total | \$1,129.82 |

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

When one party to a dispute provides testimony regarding circumstances related to a tenancy and the other party provides an equally plausible account of those circumstances, the party making the claim has the burden of providing additional evidence to support their position. As such, I have considered the oral testimony and documentary evidence submitted by both parties.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

While the tenants dispute the condition of the bottom of the oven at the start of the tenancy and therefore not responsible for the damage to the oven I note the record of the condition of any part of the rental unit or residential property is the Condition Inspection Report (both start and end of the tenancy) and any specific photographs submitted by the parties.

In regard to the oven, I note the Condition Inspection Report does not indicate any problem with the oven bottom until the end of the tenancy. I also note the only photographs of the bottom of the oven are submitted by the landlords at the end of the tenancy. As such, on a balance of probabilities, I find the tenants are responsible for the damage to the oven during the tenancy.

While the landlords have established the tenants have caused this damage, I am not satisfied the landlords have provided sufficient evidence to establish the value of this damage. The landlords have submitted that they contacted several appliance shops and were advised that there is no way to repair the enamel finish of the oven, however the landlords have provided no evidence from any supplier or repair shop confirming this submission.

Furthermore, the landlords stated that they based their estimate of damage on this item based on the purchase price of \$1,400.00 and estimated a value of the damage at \$400.00.

If the landlords had provided any evidence to confirm that the oven was not repairable and the only resolution would have been to replace the oven, I would have likely found that the landlords would have been entitled to the replacement cost of the oven. However, as there is no such evidence I find the landlords have provided no basis for the amount claim and as such, I will grant the landlords a nominal amount of \$200.00 for this compensation.

From the evidence and testimony of both parties I accept that the tenants failed to maintain the blinds during the tenancy and are therefore required to compensate the landlords for replacement subject to their depreciated value as set out in Residential Tenancy Policy Guideline #40 – Useful Life of Building Elements. This guideline stipulates drapes and venetian blinds have a useful life of 10 years.

While the landlords have claimed \$1,281.70 for replacement blinds I note the landlords have acknowledged the blinds are approximately 10 years old. As a result, I find the landlord's compensation for blinds must be discounted by 100% and I dismiss this portion of the landlords' claim in full.

In regard to the landlords' claim for a replacement exterior lightbulb, I am persuaded by the tenants' position that there is no evidence before me that the lightbulb the tenants left in the outside socket is not appropriate for exterior use. I therefore find the landlords have failed to establish the change in bulb was necessary. I dismiss this portion of the landlords' claim.

From the submissions of both parties, including the Condition Inspection Report and photographs, I am satisfied the landlords have established the tenants failed to clean the rental unit sufficiently to a reasonable standard. I am not persuaded that the tenants' position that they could not get the unit any cleaner do to the age of the finishes.

Also based on the documentary evidence I find the landlords have established that 10.5 hours cleaning was required and I find their rate of \$15.00 per hour to be reasonable. I grant the landlords the full amount of their claim for interior cleaning.

As to the landlord's claim to yard maintenance, which is separate from their claim for lawn repair, I find the landlords have failed to establish the tenants have violated the *Act*, regulation or tenancy agreement regarding yard maintenance for the following reasons:

Residential Tenancy Policy Guideline #1 states, among other things, that generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. 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 and the landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

As such, I find the tenants are not responsible for pruning or major restoration work. I find the landlord's photographic evidence does not support that the residential property required the significant work that the landlords are seeking compensation for. I do accept that the yard did require some work, based on the landlord's photographic evidence.

While the addendum to the tenancy agreement stipulates that "No major pruning or trimming of trees and shrubs by tenant without notifying landlord for approval and/or assistance" I find that this clause does not obligate the tenants to complete any pruning or trimming of trees.

I find the landlords' claim for 36 hours of year cleaned up is extreme, in part, because the landlords are also claiming 10 hours to prepare the property for lawn repairs. I also find that the landlord's evidence does not provide sufficient support to establish the 36 hours as claimed. However, I will grant the landlords 8 hours for yard work at their claimed rate of \$15.00 per hour for a total of \$120.00.

In regard to the landlords' claim for replacement heather plants, while I accept that the plants may have died during the tenancy, I find the landlord has failed to provide sufficient evidence that the plants died as a result of any action or neglect on the part of the tenants. I dismiss this portion of the landlords' claim.

Finally, I have considered the landlords' claim to restore the lawn of the residential property. Despite accepting that the residential property was subject to watering restrictions imposed by local municipal authorities, I find the landlords' photographic evidence supports their position that the damage to the lawn is inconsistent with grass dying due to drought.

I find it is likely, on a balance of probabilities that the damage to the lawn was caused by use of the tenants themselves or their dog. I find the landlords' documentary evidence supports both this claim and establishes the value of the loss suffered by the landlords as a result.

Conclusion

Based on the above, I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,055.38** comprised of \$200.00 oven damage; \$157.50 interior cleaning; \$552.88 lawn repair; \$120.00 yard maintenance; and \$25.00 of the \$50.00 fee paid by the landlords for this application as they were only partially successful in their claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$700.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$355.38**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: August 8, 2016

Residential Tenancy Branch