Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization for the return of double their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?
Is the landlord entitled to recover the filing fee for this application from the tenant?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on February 1, 2014 and ended on April 30, 2016. The tenants were obligated to pay $950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a $475.00 security deposit. The landlords counsel submits that the tenants left the suite and yard of the property in an unsatisfactory state. Counsel submits the following deficiencies; the oven was left dirty, a set of curtains and rod was missing, the yard was overgrown and not maintained, the yard had oil spills that required soil to be removed, a tree needs to be replaced, and a child's playset and gazebo were removed from the property without the landlords consent. Counsel submits that the tenants are responsible for all of these issues and that they are responsible for the costs incurred to the landlord. Counsel submits that the tenants provided their forwarding address in writing on May 1, 2016 and that the landlords filed an application online on May 15, 2016, within the legislated timeline.

The landlord is applying for the following:

1.	Oven Cleaning	$40.00
2.	Curtains and Rod	$59.99
3.	Yard and Oil Cleanup	$346.50
4.	Oil Disposal	$109.54
5.	Playset – Walmart	$726.00
6.	Gazebo- Walmart	$348.00
7.	Replace Apple Tree	$62.99
8.	Filing Fee	$100.00
9.	Minus security deposit that the landlord presently holds	-$475.00
	Total	**$1318.02**

The tenants gave the following testimony. The tenants testified that they dispute all of the landlord's claims. The tenants testified that written condition inspection reports were conducted at move in and move out but the landlords have chosen not to submit them

for this hearing. The tenants testified that they should not be liable for any of the costs that the landlord is claiming. The tenants testified that they provided their forwarding address in writing on May 1, 2016 and that the landlords did not file their dispute until May 17, 2016. The tenants testified that they believe they are entitled to the return of double the security deposit.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, **the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.**

Firstly, I deal with the landlords' application as follows.

1. Oven cleaning - $40.00.

AB testified that she was pregnant at the time of move out and that she didn't want to use oven cleaner, so she used baking soda and vinegar to clean the oven to the best of her ability. I accept that the tenant made her best efforts, however a tenant is required to leave the unit in a reasonably clean condition at move out as per Residential Tenancy Policy Guideline 1. Based on the photos of the oven at move out, the receipt, and the tenants own testimony, I find that the landlord is entitled to the recovery of this cost and is entitled to $40.00.

2. Curtains and Rod - $59.99.

The tenants testified that the kitchen and bedroom didn't have drapes since they moved in. DB testified that in the absence of the move in condition inspection report there is no way for the landlord to prove this claim. I agree with the tenant in regards to this claim. The landlord did not provide a move in condition inspection report or inventory list of items for the unit and I therefore am unable to ascertain the changes in the unit from

move in versus move out, if any. Based on the above, and the insufficient evidence before me, I dismiss this portion of the landlords claim.

3. Yard and Oil Clean up, $346.50, Oil Disposal $109.54, Replace Apple Tree - $62.99.

Counsel for the landlords submits that the tenancy agreement addendum clearly outlines that the tenants are responsible for the maintenance of the yard and plants, and trees. Counsel also submits that the tenants are also responsible for the oil spill in the yard and for causing the apple tree to die. Counsel submits that the oil disposal and replacement of the apple tree are quotes as those items have not yet been addressed. However, the landlord did submit a bill for $346.50 for the following; lawn maintenance $240.00 plus tax, remove contaminated soil $40.00 plus tax, and cut down dead tree and removal $50.00 plus tax.

The tenants testified that they adamantly dispute the landlords claim that they contaminated the soil with oil spills or that they killed the apple tree. The tenants testified that they took care of the property as if it was their own. The tenants also dispute that they did not maintain the lawn, shrubbery or trees. AB testified that he took care of the lawn sometime in mid-April and that the landlord should not be entitled to any of this claim.

I agree with the tenants' position to an extent. As outlined above, Section 67 of the Act requires the applicant to provide proof of the actual loss; in this case the landlord has not replaced the tree or disposed of any oil. As the landlord has not incurred any out of pockets costs for that, I hereby dismiss that portion of this claim.

As for the claim of $346.50, the landlord has provided sufficient evidence to support their position that the tenants were responsible for the yard maintenance. The addendum to the tenancy agreement reflects the tenants' responsibilities to maintain the property as does Residential Tenancy Policy Guideline 1, accordingly; the landlord is entitled to $240.00 plus $12.00 for GST = $242.00. The landlord has not provided sufficient evidence that the tenants were responsible for any oil spills or contaminating of the soil or causing any damage to the apple tree, therefore I dismiss that portion of this claim. The landlord is entitled to $242.00.

4. Play Set $726.00 & Gazebo $348.00.

Counsel submits that the tenants disposed of both of these items without the landlords' permission and therefore the tenants are responsible for replacing them. Counsel advised that the landlords' have not replaced the items at this time.

The tenants testified that both of these items were old and had exceeded their usefulness. The tenants testified that the items were disposed of in October 2014 and was not an issue until the tenants requested the return of their security deposit, 18 months later.

As mentioned in a previous claim, the landlords have not suffered any out of pocket costs and therefore have not met the criteria as stated in Section 67 of the Act. In addition, the landlords were aware that the tenants disposed of these items as far back as late 2014 but never mentioned that it was an issue. Based on all of the above and the insufficient evidence before me, I dismiss this portion of their claim.

In summary the landlord has been awarded a total of $282.00.

I now address the tenants' application and my finding as follows.

The tenants stated that they are applying for the return of double the security deposit as the landlord has not complied with the s. 38 of the *Residential Tenancy* Act.

> Section 38 (1) says that except as provided in subsection (3) or (4) (a), within 15 days after the later of
>
> > (a) the date the tenancy ends, and
> >
> > (b) the date the landlord receives the tenant's forwarding address in writing,
>
> the landlord must do one of the following:
>
> > (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> >
> > (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The tenants stated that they provided their forwarding address in writing to the landlord on May 1, 2016 and since the Notice of Hearing Letter is dated May 17, 2016, they are entitled to the return of double the deposit. The tenants are incorrect in this assumption. The landlords' application was filed on May 15, 2016. The Notice of Hearing letter was generated on May 17, 2016 but that does not reflect the actual date the application was filed and accepted by the Branch. As the landlord has complied with Section 38 of the Act, the tenants are not entitled to the return of double the deposit.

As neither party was completely successful in their application, they must each bear the cost of their filing fee.

Conclusion

The landlord has established a claim for $282.00. I order that the landlord retain $282.00 from the security deposit and return the remaining $193.00 to the tenants. I grant the tenants an order under section 67 for the balance due of $193.00. This order may be filed in the Small Claims Court and 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: November 15, 2016

Residential Tenancy Branch