



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid utilities and damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant evidence and testimony provided.

Preliminary Matters

The tenants confirmed receipt of the hearing documents and evidence given in August 2016. The tenants did not make a written submission.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid utilities?

Is the landlord entitled to compensation for damage?

May the landlord retain the security deposit?

Background and Evidence

The one year fixed term tenancy commenced on August 1, 2015. Rent was \$3,500.00 per month, due on the first day of each month. The landlord is holding a security deposit in the sum of \$1,750.00. A copy of the tenancy agreement was supplied as evidence.

The tenants vacated at the end of the term; July 31, 2016. The landlord received the tenants' written forwarding address on July 31, 2016 and applied claiming against the deposit on August 10, 2016.

Condition inspection reports were not scheduled by the landlord.

The landlord has made the following claim:

Water utility bill	224.30
Yard cleanup and gardening	831.75
Fuel for power washer	20.00
Fuel for power washer	29.75
Clean master bedroom	100.00
Repair bedroom ceiling	50.00
Gutter cleaning and pressure washing	375.00
TOTAL	\$1,630.80

The tenants agreed to pay the sum claimed for utilities.

Yard clean-up:

The tenancy agreement included a clause 10; outside maintenance, which required the tenants to:

- Mow and trim the lawn;
- Water lawn, shrubs and trees;
- Remove weeds and rake leaves; and
- Keep gutters clear of leaves and debris.

The landlord said that at the start of the tenancy the 1.2 acre property was immaculate. At the end of the tenancy there were weeds, the flower beds were a mess and there was debris on the driveway and in the gutters. The landlord said that there are pictures taken of the state of the yard at the end of the tenancy; the landlord did not serve photographs as evidence. The landlord said her son and husband would testify that the yard was not properly kept up. I accepted that the landlords' son and husband would provide testimony that aligned with the landlords'.

The landlord provided an August 8, 2016 invoice for trimming bushes, weeding, mowing, raking beds, cleaning the roof and leaf clean-up. The fee was \$35.00 per hour for 21 hours, totaling \$831.75

The tenants stated that the yard was not immaculate at the start of the tenancy. The landlord did have someone come to the property on several occasions at the start but that person had no equipment to use. The tenants said that they did much more in the yard than was required by the terms of the tenancy agreement. The tenants were not

required to trim bushes or clean the roof. Just prior to vacating the tenants cut the lawn. The tenants did not understand why the lawn was cut again so soon. The tenants said that the home was going to be listed for sale and that the work completed by the landlord was to prepare for sale.

The landlord responded that the work completed was not in preparation for sale; although the home was listed and sold recently.

Gutter cleaning, power washing and fuel:

The landlord paid to have the driveway pressure washed and the gutters cleaned. An August 4, 2016 invoice in the sum of \$375.00 was supplied as evidence. The landlord had the front porch, walkways and back patio cleaned. The work took 25 hours to complete. The landlord has claimed the cost of fuel for the power washer.

The tenants responded that the gutters were cleaned in the fall of 2016. The tenants had been asked to power wash during the tenancy and had refused as this was not required as a term of the tenancy.

Clean master bedroom and repair ceiling:

There was no dispute that the tenants reported ants entering the bedroom from an area around the light fixture. The tenant confirmed that plastic was taped around the fixture to stop what appeared to be carpenter ants from falling into the room.

The landlord said that when the exterminator came to investigate removal of the plastic caused damage to the ceiling. The tenant failed to clean the room after the extermination process was completed. The landlord paid to have the damage to the ceiling repaired.

The tenants said that their daughter has significant allergies, so once the treatment was completed they did not enter the bedroom again. The tenants were present when the exterminator came to the home. The plastic was removed by the exterminator, with no concern for damage as holes were going to be drilled into the ceiling. The tenants said at least two holes were drilled into the ceiling so that a metal tube could be used to inject treatment into the space above the ceiling.

The tenants raised the issue of extinguishment of the right to claim against the deposit, as the landlord had not completed condition inspection reports. It was explained that a claim against the deposit is not extinguished if the claim is for costs, outside of damage, such as utilities.

Analysis

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, policy, on the balance of probabilities

Residential Tenancy Branch policy suggests that a party may apply for compensation to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. When considering a claim for loss of rent revenue consideration is given to:

- whether a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- if the loss or damage has resulted from this non-compliance;
- if the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- if the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Based on the agreement of the tenants I find that the landlord is entitled to compensation as claimed for the water utility costs.

The landlord has claimed that the yard was not sufficiently maintained at the end of the tenancy. I have considered the term of the tenancy agreement signed by the parties and find that the costs claimed; outside of mowing and raking were not duties that the tenants had agreed to assume.

RTB policy suggests a landlord is responsible for pruning. There was no requirement that the tenants pressure wash any of the property. In the absence of a term requiring the tenants to prune or trim plants, I find that the tenants were not required to complete pruning. I have then considered the balance of the invoice for the cost of weeding, mowing, raking and yard clean-up.

In the absence of a condition inspection report, which is the responsibility of a landlord to schedule, I find that the landlord has failed to prove on the balance of probabilities that the tenants did not comply with the terms of the tenancy agreement in relation to maintenance of the yard. I found the tenants' response to the claim consistent and believable and, when weighed against the landlords' testimony, in the absence of any other evidence, I prefer the tenants' submission over that of the landlord. I also considered the fact that the landlords' son and husband would have provided the same testimony in relation to the state of the yard at the end of the tenancy. Therefore, I find that the claim for yard clean-up and gardening is dismissed.

Residential Tenancy Branch policy suggests that tenants are normally responsible for cutting grass and weeding. To expect tenants to carry out 25 hours of pressure washing allows me to categorize this as a major project. Further, in the absence of a term of the tenancy agreement where the tenants had agreed to pressure wash, I find that the claim for pressure washing and fuel is dismissed.

The landlord did not deny that the tenants had the gutters cleaned in the fall of 2016. The tenancy agreement did not set out a schedule for gutter cleaning, something that

would normally be considered the landlords' responsibility. There may have been leaves in the gutters by June 2016; however I find that gutter cleaning on an annual basis would be the reasonable standard. Therefore, the tenants would not have been expected to clean the gutters before the fall of 2017. A term requiring a tenant to climb on the roof to constantly remove leave from gutters would be unconscionable, and as a result, unenforceable.

The landlord did not dispute the tenants' submission that the exterminator made holes in the ceiling of the bedroom in order to treat the ant infestation. As a result I find that the repair to the ceiling was required as a matter of course, once those holes had been made. There was no evidence before me to show what, if any, additional repair would have been required due to some pieces of tape having been removed from the ceiling.

The landlord said that the tenants failed to clean the bedroom after the exterminator completed the work. I find that any clean-up would have been the responsibility of the landlord, not the tenant. It was due to no fault of the tenant that pest control was required. Therefore, any cleaning required as a result of pest control would fall to the landlord. As a result, I find that the claim for ceiling repair and cleaning is dismissed.

Therefore, the landlord is entitled to the following compensation:

	Claimed	Accepted
Water utility bill	224.30	224.30
Yard cleanup and gardening	831.75	0
Fuel for power washer	20.00	0
Fuel for power washer	29.75	0
Clean master bedroom	100.00	0
Repair bedroom ceiling	50.00	0
Gutter cleaning and pressure washing	375.00	0
TOTAL	\$1,630.80	\$224.30

The balance of the claim is dismissed.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$324.30, in satisfaction of the monetary claim.

As explained at the start of the hearing, Residential Tenancy Branch policy suggests that when a landlord applies claiming against a deposit any residue of the deposit should be ordered returned to the tenant.

Therefore; based on these determinations I grant the tenants a monetary order for the balance of the security deposit in the sum of \$1,425.70. In the event that the landlord does not comply with this order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to utility costs as claimed.

The landlord is entitled to filing fee costs.

The landlord is entitled to retain the tenant's security deposit in the sum of \$324.30.

The landlord is ordered to return the balance of the security deposit to the tenants.

This decision is final and binding and 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: February 08, 2017

Residential Tenancy Branch