Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with applications from both the landlords and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlords applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- authorization to obtain a return of all or a portion of the security deposit and pet damage deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords were represented by their agent SB (the "landlord") who confirmed she had full authority to represent the landlords at this hearing.

As both parties were in attendance, I confirmed that there were no issues with service of the tenant's application for dispute resolution, the landlord's application for dispute resolution or the respective evidentiary materials. The parties confirmed receipt of each other's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of the respective applications and evidence.

Preliminary Issue – Adjournment Request

At the outset of the hearing, the landlord's agent made a request that the hearing be adjourned. The agent testified that the landlords are out of the country from April 26, 2017 to May 17, 2017. The agent testified that the landlords were attempting to join the teleconference hearing from overseas but were experiencing technical difficulties and were unable to join. The agent said that she had knowledge of the issues and was prepared to give evidence should the hearing proceed. The tenant did not consent to the hearing being adjourned and rescheduled.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I note that both parties have submitted comprehensive and lengthy written evidence in support of their respective claims which includes written submissions, copies of receipts, invoices and quotations, photographs, correspondences, and other documents. The landlord's agent was present and said she had knowledge of the issues in dispute. The agent also indicated that while the landlords were unable to join the teleconference hearing she could communicate with them directly if required.

Under these circumstances, I find that there is little prejudice to the landlords to proceed with a hearing. The landlords were represented by an agent who testified that she had knowledge of the issues. The landlords had submitted documentary evidence in support of their position. While it was unfortunate that the landlords could not attend the teleconference hearing due to technical issues the line remained open for the landlords to call in during the duration of the hearing. At the hearing, I found that the landlord's agent had not met the criteria established for granting an adjournment and proceeded with the hearing.

Issue(s) to be Decided

Are the landlords entitled to a monetary award for damages as claimed?
Are the landlords entitled to retain the security deposit and pet damage deposit? If not is the tenant entitled to a monetary award equivalent to double the value of the security deposit and pet damage deposit as a result of the landlords' failure to comply with the provisions of section 38 of the *Act*?
Is either party entitled to recover the filing fee for this application from the other?

Background and Evidence

The parties agreed on the following facts. The rental unit is a standalone property on a large agricultural property. This tenancy began on May 1, 2014. Pursuant to a 2 Month Notice to End Tenancy for Landlord's Use issued in November 26, 2015 (the "2 Month Notice"), and an earlier hearing under the file number on the first page of this decision, the tenancy ended in February, 2016. The monthly rent at the end of the tenancy was $1,806.00. A security deposit of $875.00 and a pet damage deposit of $250.00 were paid at the start of the tenancy and are still held by the landlords.

The tenant testified that she owns one dog. She said that she has friends with dogs who sometimes bring those dogs onto the property. She said that the landlords have two dogs of their own who are allowed to roam about the rental property.

The tenant believes that a condition inspection report was prepared by the landlords at the start of the tenancy, but one was never provided to the tenant. As a condition inspection report was not provided, the tenant drafted a list of issues with the rental unit on May 20, 2014 and provided a copy to the landlord. The landlords prepared a condition inspection report on June 30, 2015. The tenant did not participate in the inspection at that time. A copy of this "interim inspection report" was provided to the tenant.

The parties prepared a condition inspection report on February 9, 2016 at the end of the tenancy. The landlords identified issues with the condition of the rental unit and listed them in the report. The tenant disagreed with the landlord's assessment of the rental unit condition.

The tenant provided a forwarding address on the condition inspection report of February 9, 2016. A copy of the condition inspection report with the tenant's forwarding address was submitted into written evidence by both parties. The tenant testified that the

landlords were not given written authorization that they may retain the security deposit or pet damage deposit.

The tenant seeks a return of double the amount of the security deposit paid for this tenancy.

In their Monetary Order Worksheet, the landlords claimed the following amounts:

Item	Amount
Damages to tractor, tarp and hose	$485.98
Cleaning after Tenant Move Out	$440.00
Cleaning of Dog Waste	$400.00
Damage to Door Trim by Pets	$250.01
Replacement of Curtains	$53.74
Unpaid Rent for February, 2016	$560.00
Loss of Rental Revenue February 10, 2016 – March 31, 2016	$3,052.00
TOTAL	**$5,241.73**

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit and pet damage deposit in full or file for dispute resolution for authorization to retain the deposits 15 days after the later of the end of a tenancy and or upon receipt of the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act,* equivalent to double the value of the security deposit and pet damage deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit and pet damage deposit to offset damages or losses arising out of the tenancy as per section 38(4)(a).

I find that the tenant provided written notice of the forwarding address on February 9, 2016. I accept the evidence of the parties that the landlords failed to return the security deposit and pet damage deposit to the tenant within 15 days of February 9, 2016, the time frame granted under section 38 (1)(c) of the *Act* nor did the landlords make an application claiming against the security deposit and pet damage deposit during that period. The landlords' present application to retain the security deposit and pet damage

deposit was filed on April 10, 2017, outside of the 15 day time frame granted under section 38(1)(c) of the *Act*.

The landlords submitted evidence of the rental unit's condition and the cleaning and repairs that were required after the end of the tenancy. All of this evidence is irrelevant to the issue of the return of the security deposit and pet damage deposit.

It is inconsequential if repairs to the rental unit were required, if the landlord does not take proper action to pursue this matter. Landlords are in the business of renting out residential property and it is their responsibility to educate themselves as to what is permitted under the *Act*. The landlords cannot decide to simply keep the security deposit and pet damage deposit as recourse for their loss. Nor can they wait until the tenant has filed an application to recover the security deposit and pet damage deposit, to file their own application to retain them.

In addition, I find that the landlords have not fulfilled the reporting requirements of section 24 of the *Act*. I find that the first condition inspection report prepared by the landlords was the interim inspection report dated June 30, 2015, over a year into the tenancy. If a condition inspection report was prepared at an earlier date, a copy was not provided to the tenant in accordance with section 18 of the Residential Tenancy Regulations.

Section 24 of the *Act* outlines the consequences if reporting requirements are not met. The section reads in part:

> 24 (2) The right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord
>
> …
>
> (c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

Accordingly, I also find that the landlords have extinguished any right to claim against the security deposit and pet damage deposit by failing to prepare a condition inspection report at the start of the tenancy.

Based on the undisputed evidence before me, I find that the landlords have neither applied for dispute resolution nor returned the tenant's security deposit and pet damage deposit in full within the required 15 days. I accept the tenant's evidence that they have not waived the right to obtain a payment pursuant to section 38 of the *Act* as a result of the landlords' failure to abide by the provisions of that section of the *Act*. Under these

circumstances and in accordance with section 38(6) of the *Act*, I find that the tenant is entitled to a $2,250.00 Monetary Order, double the value of the security deposit and pet damage deposit paid for this tenancy. No interest is payable over this period.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. 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 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. Pursuant to section 7(2) of the Act the claimant must take reasonable steps to attempt to minimize the damage or loss.

While I accept the evidence of the parties that there was some damage to items on the rental property, including a riding mower, a tarp and a hose, I do not find that the damage was caused by the tenant's negligent actions. I find it reasonable to expect that a riding mower would experience wear from use and its blades must occasionally be replaced or fixed. I do not find that the landlords have provided sufficient evidence to show that the cost of repairs claimed is attributable to violations by the tenant. Similarly, I find that the damage to both the hose and tarp are the result of the wear that would be expected from outdoor storage and not the responsibility of the tenant. I find that any damage to these items was not caused by the tenant's violations of the Act, regulations or tenancy agreement but through the ordinary expected use.

I find that the scope of cleaning of the property that the landlords are seeking is not damages or loss stemming from the tenant's violation of the tenancy agreement but within the scope of regular wear and tear. The tenant testified that in addition to her one dog and the occasional visit from her friend's dogs the property also hosted the landlords' two dogs. I find that the landlords have not provided sufficient evidence to show that the condition of the property is solely attributable to the tenant's dogs. As such, I find that the landlords have not demonstrated, on a balance of probabilities, that they have suffered damage or loss due to the tenant's violation of the Act, regulation or agreement, in order to justify a monetary award for cleaning of the grounds of the rental property.

I find that the landlords have provided insufficient evidence to support their full claim for damage and loss. In the absence of a condition inspection report completed at the start of the tenancy in accordance with the *Act*, there is little evidence of the original condition

of the rental unit. I find the photographs submitted into written evidence to show the condition of the rental unit prior to the tenancy to have little probative value.

I accept the landlord's evidence that the exterior door of the rental unit was damaged at the end of the tenancy. I note that this was not an item that was listed in the tenant's list of deficiencies at the start of the tenancy. I accept the quotation submitted into written evidence by the landlords as an accurate assessment of the loss of $250.01.

I find that some cleaning was required at the end of the tenancy. The landlords have submitted into written evidence a quotation from a cleaning service where they are told that the cleaning would be approximately 3 – 4 hours at $110.00 per hour. No written evidence was submitted of the actual cost of the cleaning. The landlords claim $440.00 for cleaning services, but I find that the landlords have provided insufficient evidence to support their full claim for cleaning. While I accept that some cleaning was required, based on the photographs of the rental unit submitted, the condition inspection reports and the testimony of the parties I find that a monetary award of $330.00, the lower end of the quotation, is appropriate for interior cleaning costs.

Similarly, I find that while some work was required on the property, I find that the landlords have provided insufficient evidence in support of their full claim of $400.00. The landlords have submitted a quotation for 4 hours yard work at a rate of $100.00 per hour. No written evidence was submitted of the actual cost of the work. Based on the evidence, I find that a monetary award of $200.00 is an appropriate award for the yard work.

Based on the conflicting testimonies of the parties I find that the landlords have not shown, on a balance, that the curtains and poles needed to be replaced because of the tenant's actions or negligence.

I accept the evidence of the parties that the tenancy ended on February 9, 2016. Pursuant to the decision of the earlier hearing upholding the landlord's 2 Month Notice the tenancy was ordered to end on February 5, 2016. I accept the parties' evidence that the parties agreed to extend the tenancy an additional four days. The tenant testified that she believed that the extra days in February were afforded her as a courtesy and payment was not discussed. The earlier decision from another arbitrator is silent on the issue of rent payment for the month of February. In the absence of an explicit agreement to the contrary, I find that the tenant was obligated to pay the monthly rent pursuant to the tenancy agreement. The landlords are seeking the equivalent of the rent for the nine days in February that the tenant resided in the rental unit. I accept the landlord's calculations that the outstanding rent for the nine days in

February is $560.00. Accordingly, I find that the landlords are entitled to $560.00 for rent from February 1, 2016 to February 9, 2016.

I find the landlords have not provided sufficient evidence in support of their claim for loss of rental revenue. The tenant exercised her right to remain in the rental unit until the end of tenancy. I accept the evidence of the parties that the tenancy was extended until February 9, 2016 by agreement. The landlords said that while they had selected a caretaker who would move into the rental unit after the tenant had vacated the premises, they did not contract with the caretaker until after the tenant had moved out. The landlords entered into an agreement with the caretaker in February, 2016 and the caretaker moved into the rental unit in April, 2016. While the landlords are claiming a loss of rental revenue for the balance of February and March, 2016, I find that the landlords have not shown that the loss is attributable to the tenant's violation of the Act, regulations or tenancy agreement.

The tenant disputed the landlord's 2 Month Notice in accordance with the *Act*. The 2 Month Notice was upheld in the earlier decision, and the tenant occupied the rental unit until the end of tenancy date agreed to by the parties. The landlords, out of an abundance of caution, chose not to contract with the new caretaker until the tenant had left the rental unit. As a result the caretaker moved into the rental unit in April, 2016. The tenant exercised her rights under the Act to dispute the 2 Month Notice. The landlords subsequently entered an agreement to allow the tenant to stay in the rental unit until April 9, 2016. The landlords' failure to finalize their contract with the new caretaker until the tenant left the rental unit, is not a loss for which the tenant can be held responsible.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlords to retain $1,140.01 of the tenant's security deposit in satisfaction of this monetary award.

As the tenant was primarily successful in her application, she is entitled to recovery of the $100.00 filing fee. As the landlords were only partially successful in their application, I find they are not entitled to recovery of their filing fee.

Conclusion

I issue a Monetary Order in the tenant's favour in the amount of $1,009.99 against the landlords in the following terms.

Item	**Amount**
Double Security Deposit (2 x $875.00)	$1,750.00
Double Pet Damage Deposit (2 x $250.00)	$500.00
Filing Fee	$100.00
Less Rent (February 1-9, 2016)	-$560.00
Less Damages to Landlord for cleaning and damage to front door	-$780.01
TOTAL	**$1,009.99**

The tenant is provided with a Monetary Order in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the remainder of the landlords' application.

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: May 18, 2017

Residential Tenancy Branch