



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD MND MNDC FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for damage or loss pursuant to section 67; authorization to retain all or a portion of the tenants' security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution ("ADR") sent by registered mail. The landlord confirmed receipt of the tenants' two evidentiary submissions.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for damage to the unit and/or loss of rental income?
Is the landlord entitled to retain all or a portion of the tenants' security deposit?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began on March 1, 2015 as a six month & ten day fixed term tenancy with a rental amount of \$1800.00 payable on the first of each month. The tenancy continued as a month to month tenancy until the tenants vacated the rental unit on November 30, 2016. The landlord continues to hold the tenants' \$900.00 security deposit paid at the outset of the tenancy.

These two parties have had previous dispute resolution hearings on other tenancy issues. On an earlier dispute resolution Direct Request application by the landlord, a Residential Tenancy Branch Arbitrator issued the landlord an Order of Possession for the rental unit dated November 30, 2017. At this hearing, the landlord sought \$4997.00, applied to retain the tenants' \$900.00 security deposit towards their monetary award as well as recovery of the filing fee. Their monetary worksheet provided the following amounts and totalled \$4197.23 as follows,

Items Sought by Landlord	Amount
Rental Income Loss (1 week rent)	\$452.00
Quote for landscaping services (repair of irrigation and replace trees)	2600.00

Quote for disposal of dead trees	700.00
Carpet Cleaning	315.00
Cleaning at Move-out	930.23
Less Security Deposit	-900.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order Sought by Landlord	\$4197.23

A copy of the standard residential tenancy agreement was submitted as evidence for this hearing. The agreement was signed by both parties and provides an area to add additional terms or provisions to the agreement. The agreement states that the tenant is obliged to “maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access”. The tenant is not responsible for reasonable wear and tear, according to this provision of the tenancy agreement but only to repair damaged caused by the tenants’ actions or neglect.

The landlord’s representative at this hearing (hereinafter referred to as “the landlord”) testified that the rental property is approximately 2000 square feet: the entire home and yard were rented to the tenants. The landlord was unsure of the age of the property. She testified that the tenants were responsible and agreed to take care of all yard maintenance at the property, including watering. She testified that, at the end of the tenancy, she was required to clean and paint extensively. She testified that the tenants left the carpets stained; left the bathrooms unscrubbed and grimy; and left garbage behind in the rental unit. She also testified that there was graffiti sprayed in paint all over the property and in the garage, including several appliances in the garage. The landlord also testified that the grass and cedar trees on the property were dried and dead.

The landlord testified that she did not conduct a condition inspection walk through in the presence of the tenants at the end of the tenancy. The landlord provided insufficient evidence to show that she had made further attempts to allow the tenants to be present for a condition inspection as required by section 35 through section 38 of the Act. A landlord and tenant must conduct a condition inspection together before the tenant occupies the unit and again on the day the tenant ceases to occupy the rental unit. Both parties must sign at move-in and move-out. A landlord must provide two reasonable opportunities to the tenant to attend and participate in the inspection.

A landlord's right to retain the tenant's security deposit may be extinguished if the landlord does not provide two opportunities and/or fail to provide the tenants a copy of the condition inspection report. In this case, I find the landlord provided insufficient evidence that the landlord provided the tenants with two opportunities to be present and participate in an inspection. In fact, the landlord testified that her inspection was done with her new tenant on November 30, 2016. The landlord testified that, at the end of the tenancy, the yard and lawn were in horrible condition: she testified that she believes the tenants turned off the irrigation and water system leading to the lawn and trees becoming dry and dying.

The landlord testified that, as a result of the yard damage, the landlords are required to remove the cedar trees from their yard. The landlords submitted a copy of an estimate for landscaping services but confirmed that they have not had the landscaping work done as of the date of this hearing. With respect to landscaping and the cedar trees, the tenants testified that the cedars were already dry and damaged when they moved in to the residence. They provided photographic evidence in support of that as well as documentary evidence in the form of letters from visitors to the rental unit.

The landlord testified that the landlord also lost \$452.00 in rent because the new tenant was unable to move in on December 1, 2016 and had to move in 2 weeks later on December 15, 2016 after the landlords met her requests for further cleaning and repairs. The landlords submitted a letter from the new tenant indicating that she asked the landlords to do further work on the rental unit before she moved in and also stated that her move-in was delayed because of that.

The tenant testified that they pressure washed the house prior to move-out but that the rental unit home and property is older and already had damage. The tenants referred to the condition inspection report from their move-in that indicates several items were marked as dirty or needing replacement. They testified that the whole unit was dirty at move-in and that the bath needed refinishing prior to their tenancy. The tenants submitted a receipt for carpet cleaning dated November 30, 2016 however the receipt has no information regarding address for service. The tenants both testified that they cleaned house and had carpets cleaned professionally.

A copy of the condition inspection report was submitted as evidence for this hearing. The move-in condition inspection report indicated that most of the entry area, kitchen, and living room were marked as dirty or stained. The report recorded a stained, dirty floor in the dining room; dirty, chipped, stained walls in the hallways and stairwells; dirty ceilings in the bedrooms; dirty exterior doors and siding needing repainting. There are several other notations at move-in including; cracks in concrete, damage to the front door, dirty curtains, patches on interior doors; stains on carpet; dirty closets.

At move-out, the condition inspection report showed many items marked as "same as move-in". The stovetop in the kitchen that was marked as dirty at move-in was recorded as "possible replacement needed" at move-out. The hood fan in the kitchen was marked as dirty and stained at move-in and "very stained" at move-out. The main bathroom walls and floors are described as "water damage to walls: same as move-in". The bedroom curtains marked dirty at move-in were noted at move-out as "sheers stained?" with a question mark. In the portion of the report that notes exterior of the home, the move-out report notes "considerable damage to trees and garbage" and graffiti on walls/cupboards in the garage.

On the final summary condition inspection report, at move-in, there are several items noted as requiring repairs. At move-out, the damage is listed as possible stove top being replaced and trees dead due to no water for 2 summers. There was no indication of a deduction amount from the tenants' security deposit and no agreement by the tenants to deduct a portion of their security deposit on the condition inspection form.

Analysis

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. In this case, the burden lies on the landlord/applicant.

With respect to the cleaning at the end of the tenancy, the landlord provided *some* evidence that further cleaning was required with the condition inspection move-out report. However, the condition of the unit on the report at move-out was very similar to the condition at move-in. Pursuant to section 37 of the *Act*, the tenant is required to leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. I find that the landlord has not provided sufficient evidence to show that the tenants have failed to meet the standards of the *Act*. I find, in these circumstances, where the unit was in relatively poor condition at move-in, that the tenants made reasonable efforts to clean and repair damage at the end of tenancy.

In making my determination on the condition of the rental unit and on the other matters raised by the landlord, I rely on these items as well as other materials. I have reviewed all of the evidence and have commented on the portions of the evidence that I find highly relevant. These items include but are not limited to; the condition inspection report, the testimony of the two

tenants as well as the photographic evidence provided by the tenants. With respect to the cost of cleaning submitted by the landlords, \$25.00 an hour for a total of 23 hours clean-up, I find that the landlord is not entitled to recover the cost of a cleaning person. There was no receipt submitted for cleaning - the landlords provided a log of the cleaning they undertook themselves. Given my finding that the rental unit was left in a reasonable state given its age and condition at move-in, I find that the landlord is not entitled to this portion of their claim.

With respect to painting at the end of tenancy, Residential Tenancy Policy Guideline No. 40 (with respect to the useful life of parts of a residential tenancy property) provides that a landlord should paint the interior of a rental unit approximately every 4 years. Given that the landlord painted two years prior to this tenancy, that the tenancy continued for almost two years and noting the condition of the walls as described in the condition inspection report at move-in, I find that the landlord has not provided sufficient evidence to show that the painting was required as a result of some contravention of the Act by the tenants and not merely the normal passage of time. Therefore, I find that the landlord is not entitled to recover the cost of repainting the unit.

The landlord provided a receipt to show a cost for removing outdoor wood (the dead trees). I find that the landlord provided insufficient evidence to support a claim that the tenants were somehow responsible for the removal of wood from their property. Therefore, I find that the landlord is not entitled to recover the cost of the wood removal or the planting of new trees. The residential tenancy agreement submitted with respect to this tenancy does not include a provision that the tenants are required to do landscaping work on the property. The Policy Guidelines and section 32 of the Act do not require the tenant to undergo extraordinary yard maintenance.

Residential Tenancy Policy Guideline No. 1 provides guidance on the responsibilities of landlords and tenants,

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

With respect to landscaping and lawn care, the guideline reads,

...Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.

... 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.

... Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

*... **The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.***

The care of cedar trees and other trees on the property are not, according to the Act and the attendant guidelines, the responsibility of the tenant. The landlord complained about damage to an irrigation system in the lawn as well as to damage to trees in the yard based on the tenant's negligence to the irrigation system and failure to maintain the trees or, if damaged, remove and replace. However, the landlord did not provide sufficient evidence to support this allegation. The tenants denied agreeing to additional yard obligations and again, the care and cutting of trees as well as systems or care beyond lawn-cutting falls to the landlord unless the agreement specifies otherwise. As this tenancy agreement does not specify otherwise, the tenant is not responsible to pay the cost of the removal of trees, replanting of trees and repair of the irrigation system. The landlord must prove the existence of damage or loss and must prove that the loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the tenant. The landlord is not entitled to collect for landscaping or tree removal. Similarly, I find the landlord is not entitled to a new irrigation system at the cost of the tenant.

The landlord relies provided a receipt that carpet cleaning was required at the end of tenancy. Instead of providing estimates or quotes as the landlord did with respect to the landscaping, the landlord provided a clearly dated receipt for the end of tenancy to show that carpet cleaning services had been used. The tenants also submitted a receipt. However, the information regarding location of carpet cleaning and the information regarding the location of the services were obscured in the tenant's submissions. On a balance of probabilities, I find that the landlord has shown that they required professional carpet cleaners at the end of tenancy because the tenants failed to provide sufficient carpet cleaning at the end of the tenancy. Therefore, I find that the landlord is entitled to recover the cost of the carpet cleaning from the tenant in the amount of \$315.00.

The landlord testified that rental income was lost from their newly scheduled tenancy because of the necessary cleaning and repairs. However, the extensive and well documented condition inspection report indicates that the tenants had left the unit in a condition sufficient to meet the requirements of the Act. Given all of the circumstances at the outset of this tenancy and, as the landlord has failed to show that their choice to clean further and repaint was as a direct result of action or inaction by the tenants, I find that the landlord is not entitled to recover the cost of lost income.

Based on all of the evidence submitted and the testimony at this hearing, I find that the landlord is entitled to recover \$315.00 as well as the \$100.00 cost of the filing fee as the landlord was

successful in part in the application. The landlord is entitled to a monetary amount totalling \$415.00. Despite the landlord's failure to provide sufficient opportunity to attend for a condition inspection, section 72 states that I may allow the landlord to retain all or a portion of a tenant's security deposit to satisfy all or a portion of a monetary award. In this case, the landlord holds a \$900.00 deposit from the tenants. Pursuant to section 72, I allow the landlord to retain a portion of that deposit (\$415.00) to satisfy the monetary amount owed by the tenants. In this case, the tenants are entitled to the return of \$485.00 of their original security deposit.

Conclusion

I issue the tenants a monetary award totalling \$415.00 against the tenants as follows,

<i>Security Deposit Amount Held by Landlord</i>	\$900.00
Carpet Cleaning cost awarded to landlord	-315.00
Recovery of Filing Fee for this Application	-100.00
Monetary Award to TENANTS	\$485.00

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord 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.

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: June 17, 2017

Residential Tenancy Branch