



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD, O

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The tenant's application is a request for a monetary order for \$2000.00 and recovery of his \$100.00 filing fee.

The landlord's application was originally a request for \$12,000.00; however it was subsequently amended to a monetary claim of \$8293.09.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issues are whether or not either party has established monetary claim against the other, and if so in what amount.

Tenants Application

I deal first with the tenant's application for return of double the security and pet deposits.

Background and Evidence

The parties agree that this tenancy began on September 15, 2014 and that a move in inspection report was not done at the beginning of the tenancy.

The parties also agree that the tenant paid a \$500.00 security deposit, and subsequently paid a \$500.00 pet deposit.

The parties also agree that this tenancy ended on November 30, 2016 and that a forwarding address in writing was given to the landlord on December 21, 2016.

The landlord has not returned any of the tenant security deposit or pet deposit; however on November 9, 2016 the landlord applied for dispute resolution, requesting an order to retain the full security deposit and pet deposit.

Analysis

Section 23 of the Residential Tenancy Act states:

- 23** (1) The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.
- (2) The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if
- (a) the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and
 - (b) a previous inspection was not completed under subsection (1).
- (3) The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.
- (4) The landlord must complete a condition inspection report in accordance with the regulations.
- (5) Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.
- (6) The landlord must make the inspection and complete and sign the report without the tenant if
- (a) the landlord has complied with subsection (3), and
 - (b) the tenant does not participate on either occasion.

Further, section 24(2) of the Residential Tenancy Act states

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

(a) does not comply with section 23 (3) *[2 opportunities for inspection]*,

(b) having complied with section 23 (3), does not participate on either occasion,
or

(c) does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

At the beginning of the conference call I had informed her they parties that the tenants application did not qualify for double the security deposit because the landlord had applied for dispute resolution within the time frame required under the act; however it was subsequently revealed, during the hearing, that the landlord did not do the required move-in inspection report. Therefore since the landlord did not complete a move-in inspection report, the landlord did not have the right to claim against the security deposit for damages and the landlord was required to return the deposit within 15 days of receiving the forwarding address in writing.

Further, section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord did apply for dispute resolution within 15 days; however, since the landlord did not have the right to file such a claim, the landlord is still required to pay double the amount of the security deposit.

The tenant paid a total combined security/pet deposit of \$1000.00, and therefore, pursuant to section 38 of the Residential Tenancy Act, the landlord, must pay \$2000.00 to the tenant. I also allow the tenants request for recovery of the \$100.00 filing fee.

Therefore, pursuant to sections 38, 62, 67, and 72 of the Residential Tenancy Act I have allowed a total amount of \$2100.00, which will be set off against any amount allowed in the landlords claim

Landlords Application

As stated above, the landlord cannot claim against a security deposit for damages, however the landlord still has the right to file a monetary claim against the tenant and therefore I deal with that monetary claim.

Background and Evidence

Landlords Testimony

Replacing pool liner

The landlord testified that even though the tenant was given explicit instructions on how to maintain the chemical balance in the swimming pool, the tenant failed to maintain proper chemical balance in the pool and as a result the swimming pool liner was extensively damaged, due to the high acid level at which the pool water was kept.

The landlord further testified that the tenant had fully agreed to take care of the swimming pool, and even signed a swimming pool addendum, agreeing to properly maintain the pool.

The landlord further testified that the pool liner was in good condition at the beginning of the tenancy and at the end of the tenancy the liner has been totally bleached out, with very little color left, and the pool is now leaking, losing 2 to 3 inches of water per day.

The landlord further testified that this pool liner was only 5 to 6 years old, and pool liners should last 20 years. He further states that he has had an estimate to replace the liner of \$6000.00.

Utilities

The landlord testified that the tenant agreed to pay one third of utilities at the rental property, and at the end of the tenancy, when the re-conciliation was done of the amount of utilities owed versus the amount of utilities paid, there was still a balance outstanding of \$241.31.

Pool Pump

The landlord testified that the pool pump was also destroyed by the high acid levels that corroded the pump and seized the motor, and as a result the pump had to be replaced at a total cost of \$440.05. He further states that the pump was only 5 to 6 years old as well.

Landlord further testified that he was able to replace the pump himself rather than have a company do it and as a result the cost was substantially lower than the \$895.00 amount quoted to replace the pump.

Leak Seekers

The landlord further testified that he will not be able to replace the liner until later in the year and as a result he has hired a company to find the leak in the pool and to

temporarily repair it until the new liner can be installed. The cost to have this done is \$500.00.

Lock Master

The landlord testified that the tenant failed to return one of the keys at the end of the tenancy, and, in fact, stated that he had left one of the keys outside for carpet cleaner to access the rental unit, however that key was never returned nor was it found in the alleged hiding spot. The landlord therefore states that the locks to the rental unit have to have the tumblers changed as they are high-security locks and cannot simply be rekeyed. The cost for this work is \$382.00.

Pool Chemicals

The landlord testified that due to the high acidity of the pool water, caused by the tenant, he had to spend an excessive amount of money on pool chemicals to restore the proper balance to the swimming pool water, and the cost for those chemicals totaled \$288.14.

Pool Pole

The landlord testified that, at the end of the tenancy, they found that the poll used to skim and clean the swimming pool had been broken in half and then patched back together and the cost to replace that pole is \$54.87.

Replace Kitchen Sink

The landlord stated that he is abandoning this portion of the claim.

Therefore the total reduced amount claimed by the landlord is as follows:

Replace pool liner-estimate	\$6000.00
Outstanding utilities	\$241.31
Replace pool pump	\$440.05
Locating leak in pool	\$500.00
Lockmasters	\$382.00
Pool chemicals	\$288.14
Pool Pole	\$54.87
Total	\$7906.37

Tenants Testimony

Pool Liner, Pool Pump, Locating Leak, Pool Chemicals, Leak Seekers

The tenant testified that there were no problems with the pool, mentioned by the landlord over the summer even though the landlord was there are numerous occasions.

The tenant further testified that he did put the proper chemicals into the pool however he did not purchase them from the company that the landlord had suggested as they were less expensive from Costco.

The tenant further testified that there was no evidence of the condition of the swimming pool prior to moving into the rental unit, and therefore the damage could well have been from previous neglect. He further states that right from the beginning of this tenancy he had to fill the pool frequently and therefore it may have already been leaking.

The tenant further stated that, he finds it hard to believe that the amount of damage claimed could have been caused in a three-month tenancy.

The tenant further testified that the landlord has provided no evidence to show the actual age of the swimming pool liner and therefore it could be older than the 5 to 6 years claimed by the landlord.

Utilities

The tenant does not dispute that he was required to pay utilities; however he believes he paid an extra \$152.00 at the end of the tenancy. He states that his bank statement shows this, however he further states that he did not supply a copy of the statement for today's hearing.

Lock Master

The tenant testified that he did leave the key in a hiding spot for the carpet cleaner, and for the landlord, and did so with the landlord's full knowledge. He does not know what happened to that key.

Pool Pole

The tenant admits that the Pool Pole did break when he was using it and he may have attempted to lift too heavy an amount of leaves out of the pool with the skimmer.

Landlords Response to Tenants Testimony

The landlord testified that, at the beginning of the tenancy, the tenant agreed to use the landlords suggested pool company to have the regular water testing done of the pool, and the tenant failed to do so. This company had all the information on the pool and on how much water the pool held and therefore was in the best position to accurately test the water. Records show that the tenant was not getting the water tested and the tenant admitted his guilt in the attached text messages. The tenant turned the pool to acid and the pool was damaged.

Utilities

The landlord testified that he only received the \$1000.00 rent on October 31, 2016 and did not receive the extra amount claimed by the tenant and therefore the full amount he is claiming for utilities is outstanding.

Lock Master

The landlord testified he did not agree to allow the tenant to hide a key and had no idea the tenant had done so. This was not done with the landlord's knowledge.

Analysis

Pool Liner, Pool pump, and pool chemicals

After reviewing all the evidence provided for today's hearing, including the numerous text messages, it is my finding that the tenant was aware of the fact that he did not properly maintain the chemical balance in the swimming pool, and I find it likely that this resulted in damage to the swimming pool and the pump. I therefore will allow a portion of the landlords claim for replacing the pool liner and the pool pump, and will allow the full amount claimed for pool chemicals, used to re-establish proper chemical balance.

It is my decision that I will only allow 50% of the amount claimed for the pool liner and the pool pump however, because, first of all, since the landlord did not do a move-in inspection report there is no accurate information on the condition of the pool liner and pump at the beginning of the tenancy, and secondly, since this pool liner and pump are approximately 5 to 7 years old, normal depreciation must also be taken into account.

Utilities

I will allow the landlords full claim for utilities because, although the tenant believes they have paid an extra \$152.00 towards utilities, the tenant has provided no evidence in support of that claim. I therefore accept the landlord's reconciliation of the utilities account, and allow the full amount claimed.

Leak Seekers

I will not allow the landlords claim for the cost of having a company, to determine where or if the liner to the swimming pool is leaking, because, although the landlord believes the swimming pool is leaking, the tenant testified that he had to add a significant amount of water to the pool right from the beginning of the tenancy, and therefore it is possible there was some sort of leak in the system when the tenancy began.

Lock Master

I will allow the full amount claimed for replacing the tumblers in the locks of the rental property, because the tenant did not return all the keys to the rental unit and there is no evidence to support the tenants claim that the landlord was aware of the fact that a key was to be left outside.

Pool Pole

I also allow the landlords claim for the broken Pool Pole, because the tenant has admitted to having broken that pole.

Therefore pursuant to section 62, 67, and 72 of the Residential Tenancy Act, the total amount of the claim that I have allowed is as follows:

50% estimated cost of pool liner	\$3000.00
Outstanding utilities	\$241.31
50% cost of replacing pool pump	\$220.03
Lock masters	\$382.00

Pool chemicals	\$288.14
Broken Pool Pole	\$50.87
Filing fee	\$100.00
Total	\$4282.35

Conclusion

I have allowed \$4282.35 of the landlords claim, and I have allowed \$2100.00 of the tenants claim, and I therefore set off the \$2100.00 against the \$4282.35, and I have issued a monetary order pursuant to section 67 of the Residential Tenancy Act, for the tenant to pay a total of \$2182.35 to the landlord.

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: July 24, 2017

Residential Tenancy Branch