Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on May 1, 2017 for:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on August 26, 2017 for:

1. An Order to retain the security deposit - Section 38;
2. A Monetary Order for damages to the unit - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?
Is the Landlord entitled to the monetary amounts claimed?
Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The following are undisputed facts: The tenancy of a furnished unit started on April 1, 2016 and ended on February 28, 2017. The Landlord received the Tenant's forwarding address on March 31, 2017 by registered mail. At the outset of the tenancy rent of $3,200.00 was payable on the first day of each month. The rent was reduced to $3,000.00 for January and February 2017. At the outset of the tenancy the Landlord collected $1,600.00 as a security deposit. No move-in condition inspection was conducted.

The Landlord states that the Tenant was given two opportunities to attend a move-out inspection and that although the Tenant attended on the second opportunity of March 2, 2017 the Tenant left after the walk-through. The Landlord states that no report was completed as the Tenant left. The Landlord also states that a report was completed by the Landlord but no copy was provided to the Tenant or as evidence for this hearing. The Tenant states that no offers for a move-out inspection were made by the Landlord.

The Landlord states that following the end of the tenancy new tenants were obtained for an April 1, 2017 start date. The Landlord states that the new tenants are paying monthly rent of $3,200.00.

The Landlord states that the Tenant did not clean the carpets at move-out and the Landlord claims $469.73 as the quoted costs of the cleaning. The Landlord states that the carpets were cleaned by a company that did not provide the quote but that charged the same amount. The Landlord states that the cleaning was done at the end of March 2017. The Landlord states that as the Tenant had a dog in the unit for an unknown period of time the carpets were not sufficiently cleaned by the first cleaning company. The Landlord states that an additional and "green" cleaning is necessary due to the Tenant's breach of the tenancy agreement by having a dog in the unit. The Landlord claims the additional cost for this future cleaning. The Tenant states that the carpet was not steam cleaned as the tenancy was less than one year, that they only had a dog

present for 5 weeks during the tenancy, that the dog was not allowed in the areas with carpets and that the carpets were otherwise thoroughly cleaned.

The Landlord states that the Tenant failed to leave the unit reasonably clean and claims the quoted cost of $481.60. The quote provided as evidence is undated. The Landlord states that the unit was cleaned by a different company around March 7 or 8, 2017. The Landlord states that as the quote is lower than the actual costs the Landlord thought it would be appropriate to claim the quoted cost as opposed to their actual costs. The Tenant states that she left the unit sufficiently clean. The Tenant states that the fridge could not be moved for cleaning underneath as a large cupboard had been set on top of the fridge at the outset of the tenancy and the Tenant could not move either the cupboard or the fridge underneath the cupboard. The Tenant states that she could also not move the stove as it was abutting the fridge and was a heavy gas stove. The Tenant agrees that cleaning to the windows could have been missed.

The Landlord states that the Tenants left the yard with dog feces and they claim the cost of $125.00 for its collection and disposal. The Landlord provided an unsigned invoice with no contact information on the service provider. The Landlord states that the company that did the work was a college student company and the Landlord did not ask for any different invoice than was provided. The Tenant states that on March 1, 2017 the Landlord was told that the Tenant would return on March 5, 2017 to clean the feces and that the Landlord did not disagree to this offer. The Tenant states that when the Tenant returned on that date the clean-up had been completed. The Tenant states that there were only a few piles of dog feces present in the first place. The Landlord states that the Tenant said she would attend on March 3, 2017 to clean the feces and that as the Tenants did not attend on that date the Landlord had the work completed. The Landlord confirms that the invoice for this work is dated March 2, 107. The Landlord could not explain this inconsistency with her evidence of when the Tenant was to attend.

The Landlord states that the Tenant failed to leave the yard maintained and claims $160.00 as the costs. The Landlord provides an unsigned invoice with no contact details for the service provider and no GST registration number. The Tenant states that there was snow on the frozen ground at the end of the tenancy and that the unit is located in a community at the top of a mountain. The Tenant questions how a large amount of weeds would either be present or could be pulled from the ground at this time of the year. The Tenant states that the Landlord did not have to haul any weeds away as there is a collection program in place for yard waste pick up. The Tenant was not able to contact the service provider for this claimed cost given the lack of contact detail and that no such named company could be located in the yellow pages or business directory. The Tenant states that the yard was maintained during the summer and fall months and that weeds and cutting were taken for curbside pickup during these months.

The Landlord states that the Tenant left the house sign damaged and claims a quoted sum of $150.00 for its repair. The Landlord states that the wooden sign and sign post was about 10 or 11 years old and has not yet been repaired. The Tenant states that they attended the rental unit on September 9, 2017 and took a photo that shows no sign was present. The Tenant states that the original sign post was completely rotten at the base and had fallen over during the tenancy.

The Landlord states that the Tenant damaged the outdoor ground lights that were 6 or 7 years old. The Landlord states that the lights have not been replaced and while the next tenants were not given any discount for any of the damages claimed in this application and not repaired, the tenants were told that repairs would be made in the future. The Landlord claims an estimated cost of $81.64. The Tenant states that the lights were damaged at the outset of the tenancy, were made of plastic and appeared to be much older than the age stated by the Landlord.

The Landlord states that the Tenants left the unit walls with nicks and creases. The Landlord claims $150.00 to sand, fill and paint these areas. The Landlord provides an

unsigned invoice with no contact information for the service provider and no GST registration number. The Landlord states that the walls were last painted in February 2016. The Landlord provides photos of repairs. The Tenant states that any nicks left on walls would be from normal wear and tear and that no pictures were hung by the Tenants. The tenant submits that the Landlords may have left the marks noted in their photos when the two of them moved heavy furniture themselves in the house before and after the tenancy. The Tenant states that the photo of damage to the walls only shows repairs and that the photos are of the same area only taken from a different perspective.

The Landlord states that the Tenant left the outdoor furniture cushions unclean. The Landlord states that the furniture is about 5 years old and that the cushions were cleaned just before the tenancy started. The Landlord claims $165.40 as the quoted costs to clean the outdoor cushions. The Landlord states that the cushions were cleaned just before the next tenancy. The Landlord states that the Tenant left indoor sofa cushions uncleaned and claimed the quoted amount of $130.00. The Landlord states that the outdoor cushions were cleaned on or about March 12, 2017. The Landlord claims $230.58 as the quoted costs to replace an outdoor lounger that the Landlord states were new in 2010 or 2011. The Landlord states that the lounger has not been replaced. The Landlord states that the Tenants damaged the 5 year old outdoor designer furniture and claims the quoted replacement cost of $2,997.12. The Landlord states that this furniture has not been replaced.

The Tenant states that the indoor cushions were damaged at the outset of the tenancy, that as they were very old and that they were not dirty at the end of the tenancy. The Tenant states that the outdoor furniture and cushions were left outside all year, were stored outside as instructed by the Landlord, were subject to damage by the elements and as a result they fell apart or disintegrated without any use.

The Landlord states that all the cushions were removable with a zipper, were very washable and could have been very simply cleaned in a washing machine. The Landlord states that prior to this tenancy the cushions were all cleaned by the Landlord herself.

The Landlord states that the tenancy agreement required the Tenants to maintain the pool and that the Tenants damaged the outer winter tarp that was about 5 or 6 years old. The Landlord states that this tarp was used by the next tenants in April 2017 and that the next usage will be coming up this winter. The Landlord states that the tarp has not been replaced. The Landlord claims the quoted replacement cost for a new tarp in the amount of $178.05. The Tenant states that they used the Landlord's recommended company for pool service and that the tarp was in good condition when it was put on by the company. The Tenants state that it was then left alone.

The Tenant states that the liner for the pool was in bad shape and gave way during the winter which in turn caused the tarp to fall down and tear. The Tenant states that the pool was originally a salt water pool and was used that way for many years until the Landlord chose to convert the pool to use chlorinated water. The Tenant states that the liner had a life expectancy of 8 to 10 years with the use of salt water and that the Tenant believes the liner to be 8 to 12 years old. The Tenant provides witness letters from the pool contactors.

Analysis

Section 37 of the Act provides that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-

compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

As the Landlord has not provided any supporting evidence, such as an invoice noting the state of the carpet before and after cleaning, that the carpet was so damaged by the Tenants that it could not come clean with the first cleaning and considering that there is now another tenancy in place using the same carpet, I find that the Landlord has not substantiated that the Tenant caused the first cleaning to be insufficient or that any future cost of cleaning would be solely the responsibility of the Tenant. I also consider that the Landlord has not provided any supporting evidence of the incurred costs for the first carpet cleaning that was apparently done. I note that the Landlord provided only a quote with its evidence package submitted several months after the date the Landlord states the carpets were cleaned and costs were incurred. For these reasons I find that the Landlord has not substantiated the costs claimed. However given the Tenant's evidence that the carpets were not cleaned by the Tenants at the end of an 11 month tenancy that had a dog in the unit at least for some period of time I find that the Tenants failed to leave the carpets reasonably clean. I find therefore that the Landlord is entitled to a nominal sum of **$50.00** for this breach.

Given the lack of a paid invoice for the cost of cleaning, considering that the cleaning quote provided is undated and given the Landlord's evidence that the cleaning was done months before the quote was provided as evidence I find the Landlord's claim for the cost of cleaning to be questionable and that the Landlord has not substantiated the amount claimed. However given the Tenant's evidence that some minor cleaning was missed I find that the Landlord is entitled to a nominal amount of **$25.00** for the lack of sufficient cleaning by the Tenant.

Given the contradiction in the Landlord's evidence about having the dog feces collected after the Tenant did not attend to collect the feces and the prior date of the feces collection as noted on the invoice I do not find the Landlord's evidence to be credible

and therefore prefer the Tenant's evidence and find that the Landlord agreed that the Tenant could clean the feces as stated. As the Landlord did the cleaning without allowing the Tenant to clean as agreed I find that the Landlord failed to take reasonable measure to mitigate the costs cleaned and I dismiss the claim for feces collection.

Overall I found the Landlord's evidence to lack credibility. The Landlord provided invoices with no contact or business information and provided quotes instead of paid invoices despite giving evidence that money was paid out to other companies prior to the much later provision of quotes as evidence to support its claims. The Landlord has not provided evidence of any rental losses with the ensuing tenancy due to any damaged items. I am not confident that the Landlord will actually incur such future costs as the Landlord currently is obtaining the same and better rental rate without having made any replacement to the claimed damaged articles. There is no evidence of any attempts to mitigate the costs claimed. I also find the Landlord's evidence to be somewhat contrived or exaggerated and not sufficiently credible to overcome the Tenant's rebuttal evidence. For example, the Landlord's evidence of the ease of cleaning the indoor and outdoor cushions belies the Landlord's claimed costs for cleaning the cushions. Based on the Landlord's own evidence of ease of cushion cleaning and given the evidence that the cushions have not been cleaned despite such ease, I find that the Landlord has exaggerated costs claimed for the cleaning of the cushions. For this reason I dismiss this claim.

For the above reasons and given the lack of credibility with the Landlord's evidence, I also prefer the Tenant's evidence and find that

- the yard was left sufficiently maintained over the summer months and that the ground was frozen and covered with snow at the end of the tenancy leaving no yard maintenance required at the end of the tenancy;
- the sign post was old, was rotten before the tenancy started and was damaged from normal wear and tear;

- the ground lights were aged, of poor construction materials and had been damaged prior to the tenancy;
- the Tenants left no damage to the walls; and
- there was pre-existing damage to the patio and designer furniture and that the furniture, stored as required by the Landlords, was exposed to the elements that caused further damage.

I therefore find on a balance of probabilities that the Landlord has not substantiated that the Tenant caused the damages claimed and I dismiss the Landlord's claims in relation to yard maintenance, the sign post, the yard lights, the walls, and all the patio furniture.

Given the Witness evidence in relation to the pool liner and tarp and considering the preferred evidence of the Tenants I find that the Landlord has not substantiated that the Tenants caused the damage to the pool liner and tarp and I dismiss these claims.

As the Landlord's application has met with minimal success for a monetary entitlement of **$75.00** I decline to award the Landlord with recovery of the filing fee.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the undisputed evidence that the Landlord received the Tenants' forwarding address in March 2017 and considering that the Landlord did not make an application to claim against the security deposit until August 2017 or did not return the security deposit within 15 days receipt of the forwarding address, I find that the Landlord must now pay the Tenants double the security deposit plus zero interest of **$3,200.00**. As the Tenants' application has met with success I find that the Tenants are also entitled to recovery of the **$100.00** filing fee for a total entitlement of **$3,300.00**.

Deducting the Landlord's entitlement of **$75.00** from this amount leaves **$3,225.00** owed to the Tenants.

Conclusion

I grant the Tenants an order under Section 67 of the Act for **$3,225.00**. If necessary, 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: September 29, 2017

Residential Tenancy Branch