Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened in response to applications by the landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

- a monetary award for loss under the tenancy agreement pursuant to section 67 of the *Act*; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing, with the tenant being represented by his advocate, I.C. Both parties were given a full opportunity to be heard, to present testimony, to make submissions and to call witnesses.

Both parties confirmed receipt of each other's evidentiary packages, and the tenant confirmed receipt of the landlord's application for dispute.

Issue(s) to be Decided

Is the landlord entitled to a monetary award?

Can the landlord recover the filing fee?

Background and Evidence

Undisputed testimony was presented to the hearing by both parties that this tenancy began on September 1, 2016 and ended on July 31, 2017. Rent was $3,400.00 per month, and a security deposit of $1,700.00 paid at the outset of the tenancy, was turned over to by the tenant to the property manager as a fee for re-renting the property and what the property manager termed a "breach of contract."

The landlord applied for a monetary award of $11,486.35. This figure represented the following reported loss:

ITEM	AMOUNT
Field Clean up	$350.00
Unpaid rent for August	3,400.00
Leasing Fee paid to A.S.	1,700.00
New Hot Tub Cover	618.88
Hot Tub service call	190.72
Repayment of Handyman costs	1,632.68
New Carpet for stairs	722.02
Missing Paint	373.30
Additional House cleaning	324.00
Pest Control	897.75
Other Misc. Damage to be repairs	1,281.00
TOTAL =	$11,486.35

The landlord argued that the tenant had not left the home in the “original state” in which it had been handed over to him. The landlord said that as a result of the tenant’s reported inaction on the property, a rodent problem developed, the yard was overgrown, a variety of repairs were required in the suite, and the landlord lost out on rent for August 2017.

The landlord explained that the tenant informed her by email on June 28, 2017 that he planned to vacate the property at the end of July 2017. The landlord said that when she attended the home shortly after he vacated, she noticed a large number of repairs were required, and was unable to re-rent the home until August 15, 2017.

When asked to detail the portions of her claim listed above, the landlord said that it was her opinion that the tenant had allowed rodents to take up residence in the home leading to a destruction of some wiring and requiring the attendance of a pest control expert. The landlord said an exterminator attended the premises twice, once on June 20, 2017, and again within the first two weeks of August 2017. The landlord’s witness, J.F. explained that she had lived on the property for over two decades and had never experienced a rodent problem while in occupation of the home. J.F. said that while rodents were a fact of life on a rural property, there were never any problems which

required the intervention of a pest control expert. In addition to a claim for damages related to rodent damage, the landlord said that the tenant's dog had destroyed the carpet and chewed through the hot tub cover, and she argued that the tenant had left the property in such an untidy state that it required the attention of a cleaner, a handyman and a local farmer (to perform landscaping) in order to bring it back to its original condition, so that it could be re-rented. The landlord also alleged that the tenant had removed several cans of paint which were her property and were left on the premises to perform "touch-ups" when needed.

A large portion of the hearing was spent discussing matters related to a gate which was purportedly broken during the tenancy, and debris which was found in the horse riding ring. The parties presented conflicting accounts of their interpretation of events, with the landlord arguing that the tenant had destroyed the gate when he removed it from its original moorings, and the tenant arguing that the gate was broken when he took possession of the home, and his work related to the gate had actually improved it. Furthermore, the landlord said that the tenant had put river rock in the horse riding ring, rendering it useless for its intended purpose. She explained that a large amount of labour on the part of the new tenant was required to bring the ring back to a useable condition. The tenant argued that he had not put rocks in the ring as alleged by the landlord, and stated that, in fact, he was forced to place sand into the ring because of its overgrown and clutter filled state.

The tenant disputed all aspects of the landlord's application. The tenant argued that rodents had eaten the hot tub cover, and no action on his part had caused the rodents to "infest" the home. The tenant said that many of the issues presented by the landlord related to repairs and labour required in the home were the result of normal wear and tear or natural deterioration. The tenant said that the field was left overgrown because a heat wave had made cutting the field dangerous.

At the conclusion of the tenancy, a condition inspection was performed by A.S. the property manager and the tenant. This report notes that the state of the property was left either "same" or "ok" and records several issues related to rodents chewing items. It continues by stating, "carpet cleaning upstairs to be done next week" and "tenant had carpet professionally cleaned also pressure washed house, siding, garage outside and driveway. Hot tub cover damaged and insulation chewed by rodents…full deposit forfeit for breach of contract."
Both parties submitted a large volume of evidence, notably several photographs

purporting to depict the property in varying states were presented. The landlord explained that she was not seeking “damages” but simply looking to recover funds so that she could return the home to the “original state” it was in, when the home was handed over to the tenant. The landlord said that the hot tub was approximately 5 or 6 years old, the hot tub cover, approximately 4 years old and the carpets were “maybe 3 or 4 years old” at the start of the tenancy. Additionally, the landlord said that the home was painted immediately prior to the tenant taking possession. When asked to comment on the state of the home at the time of move-in, the property manager described the carpets as “fair.”

Analysis

I will first begin by analysing the portion of the landlord’s application related to loss of rent for August 2017 and then turn my attention to the remainder of her application.

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results… A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

The landlord argued that due to the large number of repairs that were required in the rental unit, she suffered a loss of rent for August 2017. I find that by engaging A.S. for his services, the landlord made a reasonable effort to ensure the house was available for re-rental as quickly as possible; however, I find that the landlord did not suffer a loss for the entire month of August 2017 as the home was occupied on August 15, 2017. I will therefore award the landlord an award equivalent to ½ a month’s rent for August 2017, representing the first two weeks in which the home was unoccupied.

A large portion of the landlord’s application concerned damage which is purported to have been done by rodents, and through the tenant’s inaction related to the property, as a result of which the landlord deemed the home was not returned to her in its “original state.”

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. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* 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. In this case, the onus is on the landlord to prove her entitlement to a monetary award.

Section 37 of the *Act* states, "When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear." After closely reviewing the pictures of the rental unit, considering the oral testimony of all parties and examining the condition inspection report completed by the property manager and the tenant, it is evident the parties have vastly different interpretations of what is considered "reasonably clean." I find that for the purposes section 37 of the *Act* that the tenant has fulfilled his obligation and left the premises in a state which could be considered reasonably clean and undamaged. This finding is based on the condition inspection report which was filed as evidence. The landlord argued during the hearing that she expected the premises to be returned to her in their "original condition." This is not a reasonable expectation when one rents a property and the *Act* accounts for items being subject to *reasonable wear and tear*. For these reasons, I dismiss the portion of the landlord's application related to: hot tub servicing, handyman repairs, additional house cleaning and miscellaneous damage.

The landlord sought an award due to damage to the home that was caused by rodents. Both parties acknowledged there were rodents in the premises and the landlord's witness explained that she had seen rodents over the past two decades when living in the home. The landlord argued that the tenant's actions had caused the existing rodent population to become an infestation and she noted that an exterminator had informed her that the presence of the rodents had increased because of the tenant's carelessness related to leaving food scraps and other debris in the home.

The tenant denied that landlord's accusation and noted that despite repeated requests to have a pest control company attend the premises, that no exterminators were called until the end of the tenancy and ultimately, the continued presence of rodents in the home caused the tenant to vacate the premises early.

There is no doubt that rodents were present in the home; however, the nexus connecting the tenant's actions (or inactions as was argued by the landlord) to the increased presence of rodents is a tenuous one. While I accept that the landlord may have had a conversation with an exterminator who speculated as to the cause of the rodent infestation, there was little evidence directly attributing the infestation to any action by the tenant. Much evidence was presented by all parties that rodents were a pre-existing issue, and that rat bait was constantly being put around the property to mitigate the problem. I find that the true source of the rodent infestation is impossible to determine on the evidence and testimony presented, and decline to award the landlord compensation related to pest control services.

The remaining portions of the landlord's application center on field clean-up, a new carpet, a replacement of the hot tub cover, missing paint and a return of the lease payment.

A review of the addendum signed by the parties notes that, "tenants acknowledged and agree to keep yards and dwelling clean and free of garbage. Keep lawns and gardens watered and cut and repair any damage by tenants or guests." While the parties agreed that the premises required some landscaping following the tenant's departure, the tenant offered an explanation as to why the lawn was overgrown at the conclusion of the tenancy. The tenant explained that there had been a watering ban preventing him from attending to the grass, and he said he feared damaging the lawn if he cut it under such dry conditions. A copy of the condition inspection report completed by the tenant and the landlord's agent notes that this lawn was recorded as "too dry to mow." I find that a reading of the condition inspection report signed by the landlord's agent makes no mention of additional costs associated with the landscaping and find that it would be inequitable to sign off on a condition inspection report noting that the grass was long; however, seemingly excusing it. For these reasons, I decline to allow the landlord to recover the amount sought for clearing of the yard.

The landlord is seeking $722.02 for new carpet related to damage purported to have been done by the tenant's dog. The landlord's agent described the carpet at the start of the tenancy as "fair" while the condition inspection report noted it had been cleaned by the tenant at the conclusion of the tenancy. The landlord said that the carpet was "3 or 4 years old" when the tenant took possession of the rental unit, and argued that despite several attempts to clean it, the damage to it was too great.

Residential Tenancy Policy Guideline #40 notes, "If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may

consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement." The *Guideline* notes that a carpet has a useful life of 10 years or 120 months. As the carpet was "3 or 4 years" old at outset of the tenancy, I find that the carpet was already 42 months old (3.5 years) and therefore had 78 months remaining of useful life. I find that the landlord is entitled to a monetary award equivalent to 78 months of use or $469.31.

Similarly there is a *Guideline* related to 'Whirpool/Jacuzzi' which notes that the useful life of such an item is 15 years or 180 months. While the tenant argued that it was the rodents that caused damage to the hot tub cover, and the landlord argued that it was the tenant's dog which caused the damage, the fact remains that the hot tub cover was damaged while the tenant was in occupation of the rental unit. The landlord explained that the hot tub cover was approximately 4 years old or 48 months into its useful life. The hot tub cover therefore had 132 months of useful life remaining. I find that the landlord is entitled to a monetary award equivalent to 132 months of use or $453.84.

The final two items for which the landlord is seeking compensation are the compensation paid to A.S. and the missing paint. After considering the evidence and the oral testimony related to the missing paint, I find that insufficient evidence was presented at the hearing related to the amount of paint that remained or the instructions that were given to the tenant related to his responsibilities concerning the paint. A review of the tenancy agreement and addendum make no mention of 'left-over' paint and conflicting evidence was presented on what exactly the tenant was told he could or could not do with the paint. I find that on the balance of probabilities, it is more likely than not, that the tenant was not clearly instructed on the need to return the paint which had been provided for "touch ups" and therefore had a right to dispose of it. For these reasons, I dismiss this portion of the landlord's application.

The landlord has no recourse to recover the payment made to A.S. It was explained that the tenant surrendered the security deposit to A.S. as "payment" for the costs associated with re-renting the home. The landlord would be unfairly profiting from the tenant when no loss has occurred. For these reasons, this portion of the landlord's application is dismissed.

As the landlord was partially successful in her application, she may recover the $100.00 filing fee from the tenant.

Conclusion

I issue a Monetary Order of $2,723.15 in favour of the landlord as follows:

Item	**Amount**
Partial unpaid Rent for August 2017	$1,700.00
Replacement of Carpet	469.31
Replacement of Hot Tub cover	453.84
Recovery of Filing Fee	100.00
Total =	$2,723.15

The landlord is provided with a Monetary Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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: May 14, 2018

Residential Tenancy Branch