Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, MNSD, MNDCT, FFT

Introduction

In this dispute, the tenants seek compensation against their former landlord under the *Residential Tenancy Act* (the "Act") for the following matters:

1. $200.00 for a destroyed children's swimming pool;
2. $360.00 for labour and other costs related to cutting and removing tree branches;
3. $1,500.00 for the return of their security deposit ($750.00 doubled); and,
4. $100.00 for the cost of the filing fee.

The tenants applied for dispute resolution on February 19, 2019 and a dispute resolution hearing was held on June 4, 2019. The tenants and the landlord attended the hearing and the parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues with respect to the service of evidence.

I reviewed evidence submitted that met the *Rules of Procedure,* under the Act, and to which I was referred, but have only considered evidence relevant to the issue of this application.

Issue

Whether the tenants are entitled to compensation for the swimming pool, for labour and costs related to tree branch removal, for the return of their security deposit, and for the cost of the filing fee.

Background and Evidence

The tenants testified that the tenancy began on December 22, 2017 and ended on August 30, 2018. Monthly rent was $1,500.00 (which included $100.00 in exchange for firewood) and the tenants paid a security deposit of $750.00. There was no pet damage deposit. While there was no written tenancy agreement submitted into evidence, except an addendum, the parties agreed on these basic tenancy facts.

Regarding the children's swimming pool, the tenants testified that the landlord drove over it or otherwise damaged it beyond repair on an undetermined date in 2018. They estimated its value to be approximately $200.00. However, as the tenants did not submit a receipt or any documentation establishing the pool's monetary value, I did not hear any further testimony on this aspect of their claim.

Regarding the claim for the tree branch work, the tenants testified that the property (the landlord noted that it is a 17-acre property, with a wooded area) included several large trees. The trees have many large branches, some 6 to 8 inches in diameter. Hanging off of one of those trees was a swing for the tenants' two young girls.

Due to a windstorm, some of the trees became slanted, the trees were in the process of falling over, and one of the 8-inch branches started falling over. This caused a hazard to their young children, so the tenants contacted the landlord "multiple times" to do something about the hanging branches. The landlord gave them "multiple excuses" for not doing anything about the branches, and so the male tenant ended up getting his chainsaw and spending four Sundays in a row (sometime in early June 2018), and eight hours a day, cutting the hanging branches (some of them "halfway broken"). He cut the wood into pieces, putting the pieces into and moving them in a wheelbarrow. He put some of the pieces into the woods and other pieces he burned. There were, the tenant estimated, about two to three large branches.

The claim for $360.00 represents, according to the tenant who did the tree work, his time spent (32 hours), sharpening of his chainsaw, and gas for the chainsaw. The tenants did not submit a detailed breakdown of the cost or a log of the time spent.

Tenant (M.O.) explained that there were multiple emails between the tenants and the landlord about the tree work that needed to be done and stated that these emails had been submitted into evidence. However, no such emails appeared to be in the

Residential Tenancy Branch file, and the landlord testified that he did not receive copies of any of these emails.

In rebuttal to this aspect of the tenants' claim, the landlord referred me to clause #8 of the tenancy agreement's addendum, which states:

> (8) Tenants agree to mow the lawn to maintain a cut height below a maximum of 6 inches and supply gas and oil for lawn mower. Tenants agree to remove leaves and deadfall from mowed lawn area. Landlord to supply ride on mower.

The landlord argued that this clause of the tenancy agreement therefore meant that it was the tenants who were responsible for the removal of the tree branches for which the tenants claim compensation. It was not his responsibility, he submitted. Regardless, the landlord commented that he does "not know what they're talking about" in regard to the tree branch issue. He added that the tenants were well aware that it was a large acreage with a forested area.

Regarding the security deposit, the tenant J.H. along with tenant M.O.'s father attended to the rental unit at the end of the tenancy and completed a final inspection. On the Condition Inspection Report (a copy of which was not submitted by either party) the landlord deducted $100.04 for a replacement refrigerator part that the tenants' children had broken sometime early in the tenancy, and, he deducted $30.00 for a paint touch-up. The tenant J.H. felt "forced" to sign the report lest he not see any of his security deposit returned; nevertheless, he signed the report on which the $130.04 deduction had been included. At this time, the tenants gave the landlord their forwarding address in writing, on August 30, 2018.

In rebuttal, the landlord testified that the tenants (by way of tenant J.H.'s signature) agreed to the deductions of $100.04 and $30.00. Further, the landlord confirmed that he retained an additional $250.00 from the security deposit because, as was his position, the carpets in the rental unit had not been cleaned at the end of the tenancy. (The tenants disputed this, and claimed that they had, in fact, professionally cleaned the carpet. The tenant J.H. noted that he is a professional carpet cleaner and did the job himself.)

Based on the landlord's position that the carpets had not been professionally cleaned, he kept $250.00 and referred me to clause #9 of the tenancy agreement's addendum, which reads as follows:

(9) As the 7 carpets were professional steamed cleaned for tenant usage, prior to their move in date. Regardless of the time length of the tenancy, Tenants agree to have all 7 carpets professionally steamed cleaned and sanitized when carpets empty at end of tenancy and to show proof, in default the Tenants agree the Landlord may retain $250.00 out of the security deposit for carpets professionally steamed cleaned and sanitized.

In the absence of any Condition Inspection Report, I cannot determine the state of the carpets at the end of the tenancy. The tenants testified that they have photographs (or that they had photographs and submitted them into evidence) portraying the male tenant cleaning the carpets. However, no such photographs were submitted into evidence.

Finally, both parties spoke briefly about out-of-arbitration settlement discussions about the partial return of the security deposit, but these discussions never went anywhere.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Tenants' Claim for Children's swimming pool

In a dispute where a party seeks compensation, that party must present compelling evidence of the value of the damage or loss in question. Compelling evidence for the value of property might consist of a receipt, a bank or credit card statement, an invoice, or some such documentary evidence.

In this case, as the tenants provided no proof of the alleged $200.00 value of the swimming pool, I need not consider this aspect of their claim further. As such, I dismiss this aspect of their claim without leave to reapply.

Tenants' Claim for Tree Branch Cutting and Removal

The tenants claim costs for the cutting, chopping, hauling, and removal of some large tree branches that posed a hazard to their children. They claim that they contacted the landlord to deal with the issue and that the landlord made excuses about it.

With respect to the landlord's interpretation of his own addendum, clause 8 refers to the tenants' obligation to remove "leaves and deadfall" which is not the same as living or dying branches still attached to a tree.

Section 32(1) of the Act states that

> A landlord must provide and maintain residential property in a state of decoration and repair that
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> (a) complies with the health, safety and housing standards required by law, and
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> (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

What does this mean regarding trees? *Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises,* on page 7, clarifies that for property maintenance, the "landlord is generally responsible for major projects, such as tree cutting, pruning and insect control." In other words, the landlord is incorrect in his interpretation of his obligations under the Act or the tenancy agreement's addendum.

That said, when two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above their testimony* to establish their claim. The tenants say that there was a problem with the trees. The landlord refuted this assertion.

In this case, I find that the tenants have failed to prove (on a balance of probabilities) that (1) there was, in fact, any problems with the trees or the branches attached thereto, and (2) that the landlord failed to do anything about it. In the absence of any copies of emails, or other communication between the parties, I cannot conclude that the landlord is liable for costs related to the tenants' apparent dealing with the trees.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim for compensation against the landlord for the tree branch cutting and removal.

As such, I dismiss this aspect of the tenants' claim without leave to reapply.

Tenants' Claim for Return of Security Deposit

Section 38(1) of the Act requires that within 15 days after the later of the date the tenancy ends, or the date the landlord receives the tenant's forwarding address in writing, the landlord must do one of the following: (1) repay any security deposit or pet damage deposit to the tenant, or (2) apply for dispute resolution claiming against the security deposit or pet damage deposit.

Section 38(4) of the Act permits a landlord to retain an amount from a security deposit or a pet damage deposit if, at the end of a tenancy, the tenant agrees in writing that the landlord may retain the amount to pay a liability or obligation of the tenant.

In this case, the tenants agreed, in writing, to the landlord deducting $100.04 for a refrigerator replacement part and $30.00 for a paint touch-up cost. I am not persuaded by the tenant's testimony that he felt "forced" to sign the Condition Inspection Report to see the return of the remainder of the security deposit. After all, if he agreed with the deduction then it would reasonably follow that he agreed to the return of the balance. And, while it is perhaps trite law, ignorance of the law is not an excuse; the tenant could have simply refused to sign the Condition Inspection Report had he disagreed with the deductions.

Applying section 38(4) of the Act to the facts, I find that the tenants agreed in writing to the landlord keeping $130.04, and thus they are not entitled to recover this amount.

Turning next to the landlord's deduction of $250.00 for professional carpet cleaning, I find that this deduction was, however, in contravention of the Act.

Section 38(4)(a) is clear (emphasis added):

> A landlord may retain an amount from a security deposit or a pet damage deposit if, (a) *at the end of a tenancy,* the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant [. . .]

The tenancy agreement addendum attempted to lock-in the tenants to an end-of-tenancy deduction before the tenancy had ended. This before-the-end-of-tenancy potential deduction contravenes section 38(4)(a) of the Act, which only allows a landlord to retain an amount from the security deposit when the tenant agrees in writing to that deduction at the end of the tenancy.

As such, this term in the addendum is of no effect; the landlord had no legal right to retain $250.00 from the tenants' security deposit.

Finally, the evidence of the tenants was that the landlord did not return the security deposit within 15 days of receiving their forwarding address and did not apply for dispute resolution claiming against the security deposit. The landlord did not dispute this submission.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for the return of $619.96 of their security deposit. I further conclude that the landlord did not comply with section 38(1) of the Act.

Section 38(6) of the Act states that

> (6) If a landlord does not comply with subsection (1), the landlord
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> (a) may not make a claim against the security deposit or any pet damage deposit, and
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> (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

Having found that the landlord did not comply with section 38(1) of the Act, I find that the landlord must pay the tenants double the amount of the security deposit to which they were entitled at the end of the tenancy, in the amount of $1,239.92 ($619.96 x 2).

Tenants' Claim for Recovery of the Filing Fee

Section 72(1) of the Act provides that an arbitrator may order payment of a fee under section 59(2)(c) by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicants were partly successful in their application I grant them partial reimbursement of the filing fee in the amount of $50.00.

Given the above, I grant the tenants a total monetary award in the amount of $1,289.92.

Conclusion

I hereby grant the tenants a monetary order in the amount of $1,289.92, which must be served on the landlord. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims 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 Act.

Dated: June 5, 2019

Residential Tenancy Branch