Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

This matter commence on March 16, 2019 and was adjourned. On December 17, 2019 the landlord did not attend the hearing and their application was dismissed. On January 8, 2020, the landlord applied for a review hearing, which was granted on the basis they were unable to attend on December 17, 2019. The matter was sent back to the original Arbitrator, which I may vary, confirm or set aside my original decision.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. During this hearing the landlord requested to submit addition evidence, case law. Counsel for the tenant's objected to any further evidence being submitted. I denied the landlord's request to allow addition evidence; however, they were informed they can provide verbal testimony on this issue.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to monetary compensation for damages?
Is the landlord entitled to retain the security deposit and/or pet damage deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a one year fixed term tenancy which began on February 27, 2018. Rent in the amount of $2,350.00 was payable on the first of each month. The tenants paid a security deposit of $1,175.00 and a pet damage deposit of $1,175.00 (the "Deposits"). The tenancy ended on May 31, 2019.

The parties agreed a move-in and move-out condition inspection report was completed. Filed in evidence is a copy of the inspection report.

The landlord claims as follows:

a.	Cleaning	$ 320.00
b.	Yard clean, weeds, disposal	$ 322.50
c.	Refinish floor	$ 787.50
d.	Plant replacement	$ 790.95
e.	Filing fee	$ 100.00
	Total claimed	**$2,320.95**

Cleaning

The landlord testified that they did not conduct the move-out condition inspection report as the report was completed by their agent. The landlord stated that the report does not list any deficient as they were not discovered at that time.

The landlord testified that the tenants did not leave the rental unit reasonable clean as there was dust in two of the kitchen drawers, the laundry room cabinets were dusty and dirty, there was dust on light fixtures, the oven was dirty. The landlord stated they receive an estimate over the phone from a cleaning company and they estimated the cost to be $300.00. However, they had a different company do the cleaning and the actual cost was $320.00. Filed in evidence are photographs and a receipt.

Counsel for the tenants submit the move-out condition inspection report was completed with the landlord's agent. Counsel submits the report shows that the tenants left the rental unit in the same condition it was received. Counsel submit there were no deficiencies listed in the report and that the tenants have the rights to rely upon the report as any deficiency could have been discovered at that time, if there were any.

Counsel submits it is not reasonable that the landlord would go into the property two weeks after the tenants have vacated the property to do their own inspection.

Refinish floor

The landlord testified that the tenants caused damage to some of the wood floor panels. The landlord stated that the damage was not readily discoverable at the time of the move-out condition inspection. The landlord stated that the scratches were so deep that they could not have the floors sanded and had to have the wood floor replaced as it was 50 years old at the time. Filed in evidence are before pictures taken in 2017 and 2018. Filed in evidence is an after photograph.

Counsel for the tenants submit that the move-out condition inspection report shows the flooring was in the same condition as it was at the start of the tenancy. Counsel submits the flooring was 50 years old and it more likely than not starting to show its age. Counsel submits their clients deny causing any damage and are relying upon the move-out condition inspection report.

Yard clean, weeds, disposal

The landlord testified that the under the addendum to the tenancy agreement clause 5, 7 and 8 outline that it is the tenants responsible to keep the yard clean, which includes the removal of pinecones, needles, to water and cut the grass; and raking and disposing of leaves.

The landlord testified that there was significant debris left behind which they could not put in the green bins and had this had to be taken to the dump.

The landlord testified that there was a discussion with the tenants after they moved in about having someone attend to do the gardening; however, the tenants did not want this service and they verbally agreed that they would be responsible for the gardens.

The landlord testified that the tenants did not do the weeding of the gardens and the weeds overtook the garden. The landlord seeks to recover the cost of cleaning, weeding and disposing in the amount of $322.50.

The landlord submits that under common law they had the right to rely upon this agreement. Filed in evidence are before and after photographs of the gardens and a receipt. The photographs support the garden was overgrown with weeds.

The tenant testified that they don't remember having any discussion with the landlord about maintain the gardens; however, they do remember agreeing to do the weeding and watering with the property manager.

The tenant testified that they are not experts on plants. The tenant stated that they did weed; however, they were not certain what was a weed or plant. However, they did their best within their ability.

The landlord argued that it very easy to determine what a weed is. The landlord stated that information is easily accessible by looking about weeds on the internet. The landlord stated that the tenants could have contacted them if weeding was a problem.

Counsel submits that the "TBD" in the move-out condition inspection is not in reference to any debris, only to plants.

<u>Plant replacement</u>

The landlord testified that a large amount of plants were dead from being over crowed by weeds and lack of water. The landlord stated that the tenants agreed that they would be responsible for watering. The landlord stated that they had the right to rely upon that agreement under common law.

The tenant testified that they did water the gardens and lawn on the date allowed by the watering restriction.

The landlord testified that although there were watering restriction; however, those restriction do not prohibit the hand watering of gardens.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

How to leave the rental unit at the end of the tenancy is defined in Part 2 of the Act.

> **Leaving the rental unit at the end of a tenancy**
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> *37 (2) When a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear*.

Normal wear and tear does not constitute damage. Normal wear and tear refers to the natural deterioration of an item due to reasonable use and the aging process. A tenant is responsible for damage they may cause by their actions or neglect including actions of their guests or pets

Section 21 of the Residential Tenancy Regulations - Evidentiary weight of a condition inspection report states as follows:

> In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

Cleaning

In this case, the move-in and move-out condition inspection report was completed by the landlord's agent. The report shows that the tenants left the rental unit in satisfactory condition, no deficiencies were noted in the report. As the report was completed by the same parties, I find it would be reasonable that they would apply to the same standards for completing both the move-in and move-out condition inspection report.

The landlord inspected the rental unit after the move-out inspection was completed and determined some items were not left cleaned. I have looked at the landlord's photographs, all though there may have been some very minor deficiencies, these do not support the rental was left unreasonably clean. The Act requires the tenants to leave the rental unit reasonably clean; not perfectly clean. It appears to be the landlord's standard is higher than their own agents, and higher than the requirements of the Act.

Further, the move-out condition inspection report was completed in accordance with the Act, I find the tenants had the right to rely upon the report as these **minor** deficiencies could have been discovered and the issue raised at that time. Therefore, I dismiss the landlord's claim for cleaning

If the landlord has a higher standard than their agent, that is an issue for the landlord to address with their agent. You cannot hold the tenants responsible for their differences.

Refinish floor

The evidence of the landlord was that the tenants caused damage to the wood floor, which was not easily visible. However, the move-out condition inspection shows the floor was in the same condition as when the tenancy commenced. The report was completed by the landlord's agent.

While the landlord has provided before photographs pictures, labeled photograph #1 and #2 in the evidence; however, photograph 1 shows a small corner area of the flooring, which appears not to the area subject to this dispute. Photograph #2 shows a young family lying on the floor which is covered by an area rug and only a small area of the flooring visibly, although slightly blurry. Further, they were not taken on the day the tenants took possession of the rental unit.

I find I can put little weight, if any, on these photographs as they do not show the entire floor and were not taken on the date the tenancy commenced. I find the landlord has failed to provide a preponderance amount of evidence to the contrary. Therefore, I am not satisfied the damage was caused by the tenants.

Further, the landlord is claiming the cost to refinish the floors. I find it unreasonable that the landlord is claiming the cost of refinishing the flooring, when this cost was not incurred as the flooring was replaced and not refinished as claimed.

Furthermore, even if I was satisfied that the damage was caused by the actions of the tenants, which I am not, and the claim before me was to cover the cost of the replacement of the flooring, which it is not. The landlord may have been entitled to a depreciated value of the flooring at the time it was replaced. However, the landlord's claim would fail as the Residential Tenancy Policy Guideline # 40 defines the useful life span of a building element. The PG has determined the useful life span of wood flooring is 20 years and the flooring was 50 years old at the time of replacement. This is **30 years past** its useful lifespan. The landlord would not be entitled to compensation as the flooring had been fully depreciated. Therefore, I dismiss this portion of the landlord's claim.

Yard clean, weeds, disposal

The tenants were responsible to complete the work as stated in the addendum of their tenancy agreement. While I accept weeding of the garden is not listed in the addendum, I find the tenants did verbally agreed as this was admitted by tenant at the hearing. I find the landlord had the right to rely upon that agreement.

I reviewed the landlord's receipt which show work was done on June 10, 11, &12, 2019. The receipt is itemized as follows:

1. Landscape lawn and cut grass $105.00
2. Clean yard – weed-leaves $97.50
3. Dump run -trim trees, hedges $120.00

I am not satisfied that the tenants are responsible for landscaping the lawn. This receipt does not detail what was actually done. Further, as the tenancy had ended on May 31, 2019, I find it more likely than not that the lawn was due to be cut as the grass was cut 10 to 12 days after the tenancy had ended, which is not uncommon at that time of year

that grass is cut weekly basis. I find the tenants are not responsible for item 1. Therefore, I dismiss this portion of the landlord's claim.

I am satisfied that the tenants are responsible for item 2, as this is following their tenancy agreement and their verbal agreement with the landlord. Therefore, I find the landlord is entitled to recover the cost of **$97.50.**

I am not satisfied that the tenants are responsible for item 3. This is a dump run, which appears to be from trimming trees and hedges. There was no evidence from the landlord that tree trimming was discussed and that the tenant's agreed to be responsible for such work. The evidence of the tenants that they agreed to water and weed the gardens.

As the onus of proof is on the landlord, I find without further evidence, such as an amended tenancy agreement, or verbal confirmation by the tenants, that thy have failed to meet the burden of proof. Further, tree trimming is normally the landlord's responsibility under the Residential Tenancy Policy Guidelines #1. I find the tenants are not responsible for cutting or trimming trees or hedges. Therefore, I dismiss this portion of the landlord's claim.

Plant replacement

In this case, the tenants were living at the property. While I accept watering of the garden is not listed in the addendum, I find the tenants did verbally agreed as this was admitted by tenant at the hearing. I find the landlord had the right to rely upon this agreement.

Further, the affidavit of M.R. states that they were watering the yard on the days allowed under the water restrictions and the dead plants were out of their control. I find their actions was neglectful as they could have hand watered the plants as that does not apply to the water restrictions, rather than let them unnecessarily die.

Furthermore, the tenants also had a duty to inform the landlord of any problems that existed, such in this case the dying plants, whether or not they were responsible under any agreement. This gives the landlord an opportunity to mitigate the damage to the property, this was not done by the tenants. A party must do whatever is reasonable and simply stating it was out of their control and doing nothing is unreasonable. I find the tenants are responsible for the loss of the plants in the amount of **$790.95.**

I find that the landlord has established a total monetary claim of **$988.45** comprised of the above described amounts and the $100.00 fee paid for this application.

I order that the landlord retain the above amount from the Deposits, in full satisfaction of the claim. I grant the tenants an order under section 67 of the Act for the balance due of their Deposits in the amount of $**1,361.55,** should the landlord fail to return the balance due of the Deposits.

Therefore, my original decision made on December 17, 2020, is varied by this decision and order.

Conclusion

The landlords are granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim. The tenants are granted a formal monetary order for the balance due of their Deposits.

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 28, 2020

Residential Tenancy Branch