Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDL-S, FFL, MNSD, MNDCT, FFT

Introduction

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

The Landlord applied on July 10, 2020 for:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee - Section 72.

The Tenant applied on October 2, 2020 for:

1. An Order for the return of double the security deposit - Section 38
2. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirmed receipt of each other's evidence packages.

Issue(s) to be Decided

Are the Landlords entitled to the monetary amounts claimed?

Are the Tenants entitled to return of double the security deposit?

Are the Tenants entitled to the compensation claimed?
Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The following are agreed facts: the tenancy under written agreement started on April 29, 2018 to end April 30, 2019. Rent of $2,500.00 was payable on the first day of each month. The tenancy agreement provides that at the end of the term the Tenant is required to move out of the unit unless an agreement is reached for another fixed term. At the outset of the tenancy the Landlord collected $1,250.00 as a security deposit and $1,250.00 as a pet deposit. A second tenancy agreement was again started on May 1, 2019 for a fixed term to end April 30, 2020. Rent of $2,500.00 was again payable on the first day of each month. This agreement again provides that at the end of the term the Tenant is required to move out of the unit unless an agreement is reached for another fixed term. Both agreements have the same addendum. On February 26, 2020 the Tenants were given a two month notice to end tenancy for landlord's use (the "Notice") with an effective date of April 30, 2020. The stated reason for the Notice is that the Landlord will occupy the unit. The Tenants moved out of the unit on June 30, 2020 and the Landlord returned a portion of the pet deposit of $1,050.00 received by the Tenant on July 14, 2020. The Parties mutually conducted both a move-in and move-out inspection with a report completed. The move-out report was copied to the Tenants. The Tenants forwarding address was provided on the move-out report dated June 30, 2020.

The Tenant states that no move-in report was provided to the Tenant after the April 27, 2020 inspection until received with the Landlord's evidence for its application. The Landlord's Agent states that 2 copies of the move-in report were printed in advance of the inspection and that at the time of the inspection both reports were filled in with the same information and the second copy was given to the Tenant at the time of the move-in inspection. The Tenant states that 2 copies were not present at the inspection and that they took photos of the completed inspection report at the time of the inspection.

The Tenant states that the Landlord's evidence of the provision of a move-in report at the time of the inspection is contradicted by the Landlord's own evidence in the form of an email dated May 11, 2018 in which the Landlord informs the Tenant that a copy of the lease and move-in inspection report were being sent by regular mail. The Tenant argues that the Landlord's right to claim against the security deposit has been extinguished by its failure to provide a copy of the move-in report to the Tenant within 7 days of the inspection. The Landlord states that in addition to a copy of the report being provided at the move-in inspection another copy was sent by regular mail.

The Tenant states that after receipt of the Notice the Landlord acknowledged that they were going to move back into the unit but would discuss a move out date for 6 or 12 months later. The Tenant states that it was unclear whether the Landlord was extending the effective date of the Notice or whether it was negotiating another tenancy agreement. The Tenant states that an oral agreement was reached whereby the Tenants would pay monthly rent of $3,500.00 for a tenancy of up to another 6 months. The Tenant states that this amount was paid for May 1, 2020. The Tenant states that it was not clear if the Landlord intended to rescind the Notice or if the tenancy would become a month to month tenancy with no fixed term. The Tenant states that nothing about the agreement for more rent was put into writing and no amendment was made to the written tenancy agreement. The Tenant states that the Landlord never informed them that the Notice was rescinded.

The Tenant states that on May 24, 2020 the Landlord posted a notice to the Tenant that the rent for May 2020 was accepted for use and occupancy only. The Tenant states that the notice was dated May 1, 2020. The Tenant states that it believed that the oral agreement was to continue the tenancy for another two months with a potential for a longer term. The Tenant states that when they received the notice for use and occupancy, they realized that the Landlord intended to move into the unit on June 30, 2020. The Tenant states that they accepted this understanding and moved out on June

30, 2020. The Tenant states that it withheld rent for June 2020 on the basis of the Notice giving them an entitlement to a month's rent.

The Tenant argues that the Landlord's request for the additional monthly rent starting May 2020 was illegal and made when they could not evict the Tenants or increase rent according to the ministerial order that came into effect on March 30, 2020. The Tenant claims return of $1,000.00 as the extra rent paid for May 2020.

The Landlord states that they issued the notice that rent for May 2020 was being accepted for use and occupancy only as these dates were outside the fixed term end date. The Landlord states that as of March 5, 2020 the Tenant confirmed that rent of $3,500.00 would be payable for May and June 2020. The Landlord states that the intent was to extend the effective date of the Notice for the Tenants to move out of the unit. The Landlord states that it attempted to contact the Tenant at the beginning of February 2020 with calls and emails however the Tenant did not reply so the Landlord then served the Notice. The Landlord states that it was the Tenant who asked to extend the move-out date.

The Landlord states that although the Tenants are entitled to one month compensation for the Landlord ending the tenancy with the Notice, they are only entitled to compensation for the monthly rent payable as set out in the tenancy agreement: $2,500.00 and that as the Parties had agreed to increase the rent for May and June to $3,500.00, the Tenants owe the Landlord $1,000.00 for having received compensation of $3,500.00.

The Tenant states that the Notice was given to them and the rent increase was forced on them at a time when Landlord's were not allowed to end tenancies in the manner done and were not allowed to obtain rent increases. The Tenant states that despite this, the Tenants honored the Notice.

The Landlord states that despite the Tenants information that the carpets had been cleaned at move-out they were left with stains and looking unclean. The Landlord states that the basement carpet in particular had a smell of cat urine. The Landlord states that the carpets are all about 15 to 20 years old. The Landlord claims $200.00 for the cleaning costs. The Tenant states that they steam cleaned all the carpets and used pet shampoos. The Tenant states that the carpet cleaner tracks are visible in the photos and video the Tenants provided as evidence. The Tenant states that although the odor is noted on the move-out report as being present, the Tenants disagreed with that notation at the time. The Tenant states that the one carpet had a pre-existing stain.

The Landlord claims $9.00 as the cost of draino used to unplug the kitchen sink. The Landlord states that this damage is not noted on the move-out report. The Landlord confirms that no receipt has been provided for this cost.

The Landlord states that the Tenants left 8 screw and large nail holes on the walls. The Landlord states that it patched the holes itself and claims $120.00 as compensation for its labour. The Landlord states that it calculated this cost based on $15.00 per hole. The Landlord states that this damage is noted on the move-out report. The Landlord provides photos. The Tenant states that no damage is noted on the move-out report and that the damage can only be considered reasonable wear and tear. The Tenant agrees that it left a whiteboard attached to a wall by screws but that the Landlord negligently created the damage by enlarging the holes when it removed the whiteboard. The Landlord denies being negligent and states that it used an electric drill device to remove the screws.

The Landlord states that the Tenants left the leaf blower damaged and claims $224.00 as its replacement cost. The Landlord states that it was cracked across the starter and would not start. The Landlord states that it was new around 2016. The Landlord states that it was less expensive to purchase a new blower than to have it repaired. The Tenant states that it had its own leaf blower and never used the Landlord’s leaf blower

during the tenancy. The Tenant states that the condition of the blower was not noted in either the move-in or move-out report.

The Landlord states that the Tenants failed to leave the back yard maintained leaving it with bare patches and overgrown with weeds. The Landlord claims an estimated $500.00 to reseed and place topsoil on the yard. The Landlord states that although it moved into the unit in July 2020 it has not done this repair and plans to complete it this spring. The Tenant states that while there is nothing in the tenancy agreement that requires the Tenant to maintain the yards, it did so anyways. The Tenant states that there was no failure to maintain the yard and that it was overgrown at move-in. The Tenant states that the Landlord has only provided a zoomed in photo of a corner that shows weeds. The Tenant states that the photos it has provided show the yard to be in excellent condition.

The Landlord withdraws the following claims:

- $263.00 for winter pool cover;
- $27.00 for a leaf skimmer;
- 82.00 for a pool vacuum hose;
- 42.00 for propane;
- 150.00 for a swing cover;
- $970.00 for a pool pump; and
- $180.00 for a pool cover pump.

The Landlord states that after the first hearing the Landlord reviewed the policy on expected life of building elements and decided to withdraw these at the hearing in order to save time as the Landlord did not have the required evidence to support its claims.

The Landlord states that the pool was not prepared by the Tenant to be opened for an inspection at move-out and as a result the pool was not inspected as it would have taken 8 hours to open the pool. The Landlord states that they thereafter had a pool

inspection as there was a tear in the pool liner. The Landlord claims $60.00 for the call out charge and $255.00 for the labour costs for the attempt to have the liner patched. The Landlord states that the inspector had recommended that the pool liner be replaced. The Landlord states that the patch on the approximate 5-inch tear is holding so far but they are not sure how long it will last. The Landlord states that the life of the liner is 15 to 20 years and that the liner is 8 years old. The Landlord states that the condition of the liner is not noted in the move-in report. The Landlord claims an estimated cost of $8,000.00 and provides a copy of that estimate from the pool company.

The Tenant states that they did not damage the liner. The Tenant states that the Landlord's estimate is an email from the company that sets out that an accurate quote cannot be made without a visual inspection of the liner. The Tenant states further that this quote was obtained September 24, 2020 after the Landlords had full use of the pool over the summer. The Tenant provides a video taken by the Landlord's neighbour and states that it shows the Landlord's use of a fully operational pool. The Tenant states that during the inspection of the pool on June 27, 2020, the pool company told them that that they were the manufacturer of the pool, that the liner was original to the pool and should only last 15 years. The Tenant states that the liner should have been replaced several years ago. The Tenant states that there was no damage to the liner noted on the inspection of June 27, 2020. The Tenant states that the pool invoice dated July 6, 2020 indicates that the liner is damaged and need a patch kit but that there is no recommendation for the replacement of the pool liner. The Tenant argues that the damage was repaired and used by the landlord all summer. The Tenant states that after September 14, 2019 the pool was closed and that the inspection on that dates does not note any damage. The Tenant states that the pool was not thereafter opened to the end of the tenancy.

The Landlord states that the original pool liner was damaged and replaced about 10 or 12 years ago The Landlord argues that the inspection on June 27, 2020 was only in

relation to the mechanical operation of the pool and that this was the only thing checked.

The Landlord states that while the unit was left fairly tidy, the Tenants left windows unclean, marks on the walls, mold on the bathroom shower, lightbulbs unchanged, and furnace vents unclean. The Landlord states that the Tenants also failed to clean under appliances that were not on wheels and between the washer and dryer that could have been reached by an arm. The Landlord claims cleaning costs of $335.00. The Landlord states that the furnace and vents were last cleaned by the Landlord in 2018.

The Tenant states that the addendum sets out that they did not have to clean the windows at move-out as they were dirty at move-in. The Tenant provides move-in photos. The Tenant states that they otherwise left the unit reasonably clean and better than how they received it at move-in. The Tenant provides video of the state of the unit at move-out.

The Landlord claims $360.00 to power wash exterior patio and deck areas.

The Landlord states that the salt cell for the pool was new at move-in and that after the end of the tenancy the company told them that the cell had never worked. The Landlord states that the Tenants never informed them of cell not working and had they done so the Landlord could have had it returned or replaced. The Landlord states that the Tenants were given verbal instructions on the maintenance of the pool water and when the Tenants informed them of a low salt cell the Landlord told them to boost it with chlorine. The Landlord states that the Tenants were using continual chlorine without informing the Landlord. The Landlord states that the Tenants would have had to known that the salt cell was not operational as it was used to keep the pool clean. The Landlord claims $916.00 for the salt cell replacement.

The Tenant states that it followed the manufacturer instructions and the Landlord's verbal instructions on whether to add salt. The Tenant states that it never used chlorine pucks, conducted monthly samples and as indicted by the last pool inspection the water was left with excellent quality. The Tenant states that the Landlord used a non-professional person to install the new salt cell at the onset of the tenancy The Tenant states that a week after this installation the Landlord was informed of the low salt quality and that the Landlord told them to increase the chlorine by a certain percentage. The Tenant states that at no time were they ever informed of a problem with the salt cell that only last for 2 to 3 years and that by the end of the cell's life, the water will have a low slat count. The Tenant states that the Landlord's system was also obsolete and that there are no new parts. The Tenant argues that if there was a problem with the salt cell it was from age and an unprofessional installation.

The Tenant states that as a result of the Landlord's application the Tenant incurred a large legal bill and experienced significant stress. The Tenant claims $15,000.00 as compensation for either the Tenant's legal bills or for aggravated damages. The Tenant states that the Landlord has made fraudulent claims and that the Tenant should be entitled to compensation in the form of aggravated damages. The Tenant states that it spent months and hours to deal with the Landlord's fraudulent claims. The Tenant argues that this is an intangible loss that is addressed in policy guideline #16. The Tenant concedes that this may be stretching the policy a bit but that the Landlord has attempted to weaponize vexatious claims and there need to be a mechanism for dealing with this type of application.

The Tenant states that from March to June 30, 2020 the Landlord was condescending and demeaning, forcing the Tenants to respond quickly to the Landlord's email or text demands. The Tenant states that the Landlord repeatedly harassed them during the last month of the tenancy to open the pool. The Tenant states that on June 9, 2020 the Landlord was told the Tenants could no longer meet their demands. The Tenant states that all aspects of its life were affected, including its mental health. The Tenant states

that the stress was in addition to the already stressed situation with COVID, homeschooling, jobs and other commitments.

The Tenant states the aggravated damages are also for the Landlord's vexatious, punitive, frivolous, and highhanded behavior. The Tenant states that the Landlord also made unsubstantiated claims in its application causing great work to address them. The Tenant states that it was highhanded of the Landlord to wait until the hearing to withdraw many of its claims. The Tenant states that it has never experienced legal interaction while the Landlords have lots of this experience. The Tenant states that the Landlords are fraudsters and that the Tenant's only recourse was to obtain legal assistance.

The Tenant states that the Landlord sent malicious emails to the Tenants from June 2 to 9, 2020 in relation to demands involving rent, the pools, power washing and the state of the unit. The Tenant states that the Landlord made threats to have the Tenants incur costs. The Tenant states that after extensive research they discovered that the threats were baseless. The Tenant argues that it only needs to show highhanded conduct by the Landlord to be granted aggravated damages. The Tenant states that it has plenty of evidence of highhanded conduct including the Landlord's meritless claims. The Tenant states that it obtained legal help to address the Landlord's application in May 2020. The Tenant confirms that it did not contact the Landlord to try and reach a settlement. The Tenant confirms that it has not provided any medical or psychological reports to substantiate its mental and physical health being affected by the Landlord's behavior.

The Landlord states that between March and May 31, 2020 it tried to help the Tenants and did not force them out of the unit. The Landlord states that their relationship with the Tenants was cordial until June 2020 when the Landlord asked the Tenants to open the pool. The Landlord states that the Tenants were responsible for this action. The Landlord states that the Tenants threatened the Landlord through their lawyer and that this was very intimidating. The Landlord states that they only sent three or four emails

about the inspection of the pool and argues that this is not harassment. The Landlord states that the Tenants gave them binders with legalese. The Landlord argues that supreme court decisions have nothing to do with the Tenants' claims. The Landlord argues that the Tenants breached their privacy by conducting internet searches of their daughter from age 15 to her wedding. The Landlord states that they could not afford legal counsel. The Landlord states that asking for the pool opening and payments is neither highhanded nor harassment. The Landlord argues that they only pursued their rights and that it did not decide to withdraw some claims until just before the hearing. The Landlord states that they did not pursue a settlement as the Tenants were only interested in the Landlord withdrawing all its claims. The Landlord states that they were also stressed and on medications. The Tenant states that the search of the Landlord's family was through public access sites where the Landlord cannot have an expectation of privacy.

Analysis

Section 23(5) of the Act provides that the landlord must give the tenant a copy of the move-in report in accordance with the regulations. Section 18(1)(a) of the Regulations provides that the landlord must give the tenant a copy of the signed condition inspection report of an inspection made at move-in, promptly and in any event within 7 days after the condition inspection is completed. Section 24(2)(c) of the At provides that 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 does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Given the email dated May 11, 2018 in which the Landlord informs the Tenant that a copy of the lease and move-in inspection report were being sent by regular mail, and based on the undisputed evidence that the move-in inspection occurred April 28, 2020, I find on a balance of probabilities that the Landlord failed to provide a copy of the move-in report within the time required. As a result, I find that the Landlord's right to claim against the security deposit for damages to the unit was extinguished at move-out. While this does not stop the Landlord for claiming against

the security deposit for other compensation such as unpaid rent, the Landlord's claim for unpaid rent was without any merit and was based on the Landlord's own breach of the Act. As the only other claims were in relation to damage to the unit, I consider therefore that the Landlord's application was effectively only in relation to damages to the unit for which the Landlord could not withhold the security deposit pending the outcome of these claims.

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.
Policy Guideline #17 provides that return of double the deposit will be ordered if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the Act. As the Landlord only returned $1,050.00 to the Tenants, I find that the Landlord retained $1,450.00 of the total combined pet and security deposit and that the Landlord must now repay the Tenants double the remaining deposit in the amount of **$2,900.00**.

Section 13.1(2) of the Regulations provides that the circumstances in which a landlord may include in a fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

> (a)the landlord is an individual, and
>
> (b)that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

Section 5 of the Act provides that Landlords and tenants may not avoid or contract out of this Act or the regulations and that any attempt to avoid or contract out of this Act or the regulations is of no effect. Given that the tenancy agreement requirement for the Tenants to move out of the unit was contrary to the Regulations I find that this term is of

no effect and that at the end of the fixed term the tenancy agreement therefore continued on a month to month basis at the same rental rate unless raised in accordance with the Act.

Section 43(1) of the Act provides that a landlord may impose a rent increase only up to the amount agreed to by the tenant in writing. As there is no evidence of a written agreement by the Tenant to accept the rental increase at the end of the fixed term and as there is no evidence that the Landlord followed the Act in otherwise obtaining the rental increase I find that the Landlord is not entitled to the higher rental amount claimed and I dismiss its claim for $1,000.00 and find that the Tenants are entitled to return of the extra **$1,000.00** paid in rent.

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. There is nothing in the tenancy agreement that requires the Tenants to maintain the exterior of the building or yard beyond "reasonable health, cleanliness and sanitary standards". As a result, I find that the Landlord has not substantiated that the Tenant's breached wither the Act or the tenancy agreement in not power washing the exterior of the property. I dismiss this claim.

Given the Landlord's evidence that the salt cell never worked throughout the tenancy any use of that cell would not cause the cell to stop working. There is no evidence that the Tenant were aware that the cell was not working and there is no evidence that the use of the pool by the Tenants with an unworking salt cell caused any damage. I therefore find that the Landlord has not substantiated that the Tenants caused the salt cell to require replacement and I dismiss this claim.

As the Landlords did not incur any costs for replacement of the liner, I find that the Landlord has not substantiated the cost claimed. Given the undisputed evidence of the

pool invoice noting only a patch required and the undisputed evidence of the Landlord's ongoing use of the pool after this date as well as after the date of the claim being made, I further find that the Landlord has not substantiated that the pool liner was damaged by the Tenants to the extent claimed. For these reasons I find that the Landlord has not substantiated that the Tenants caused the pool liner to require replacement and I dismiss the claims in relation to the pool liner and call out costs.

Given the Landlord's photo evidence and the Tenant's evidence of having left a whiteboard attached to the wall, I find on a balance of probabilities that the Landlord has substantiated that the Tenants left the walls with damage. Given the Landlord's reasonable calculation of costs, I find that the Landlord has substantiated its claim for **$120.00**.

A landlord is responsible for the maintenance of the heating and ventilation system. Further a landlord cannot expect a tenant to move appliances without wheels for cleaning underneath as this may cause damage to the flooring. There is no evidence that the Landlord moved the appliances to allow the Tenants to clean. For these reasons I find that the Landlord has not substantiated the costs related to clean these areas. Given the Landlord's photos of the unit however, there are some cleaning misses that the Landlord has substantiated. As a result, I find that the Landlord has only substantiated a nominal amount of **$50.00** for these misses.

Given the lack of any indication on either the move-in or move-out report of the condition of the leaf blower and considering the Tenant's evidence of not having damaged the blower, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants damaged the leaf blower and I dismiss this claim.

Policy guideline #40 sets out the useful life of carpets at 10 years. Given the age of the carpets, the Tenant's supported evidence of having cleaned the carpets and the undisputed evidence of the carpets having pre-existing damage, I find on a balance of

probabilities that the Tenant's left the carpets as clean as could be expected given the age of the carpets. As the carpets were beyond their useful life, I find that any costs to repair or clean the carpets remains with the Landlord. I dismiss the claim for carpet cleaning.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the lack of an invoice or receipt for the draino I find that the Landlord has not substantiated that the loss claimed has been incurred or established. I dismiss this claim. As there is nothing in the tenancy agreement that requires the Tenants to maintain the yard beyond reasonable cleanliness and considering that the Landlord has not done the repairs for which the costs were claimed, I dismiss the claim for reseeding the lawn.

Given the Landlord withdrawal of the claims as set out under the facts, I dismiss these claims.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment, including a right to reasonable privacy and freedom from unreasonable disturbance. Aggravated damages are awarded where compensation is necessary to take into account distress and humiliation or other serious injury and not to penalize the offending party. Although the Landlords ultimately were not found entitled to all of their claims made in the application, I do not consider the pursuit of the damage claims prior to making the application to be without legitimate purpose. Further, the Tenant's evidence is that it knew after some research that the Landlord's claims were baseless. A few emails do not constitute evidence of harassment and I do not consider the emails to be highhanded behavior but rather based on the Landlord's understanding of the Tenant's responsibilities. There is no evidence to support serious injury to the Tenants as a result of these emails and stress over disputes is not out of the ordinary. Further, the Tenants' evidence also indicates that the amount claimed is the legal costs incurred by

the Tenants. There is nothing in the Act that provides compensation to parties for their participation, whether with legal counsel or alone. in the dispute proceedings other than the recovery of the filing fee. For the above reasons I find that the Tenants have not substantiated its claim for either recovery of its legal costs or for aggravated damages. I dismiss this claim.

As both Parties applications have met with some success, I find that they are each entitled to recovery of the $100.00 filing fees and I set these fees off each other. Deducting the Landlord's remaining entitlement of **$170.00** from the Tenants' remaining entitlement of **$3,900.00** leaves **$3,730.00** owed to the Tenants.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$3,730.00**. 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 Act.

Dated: February 10, 2021

Residential Tenancy Branch