Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, FFL

Introduction

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

1. A Monetary Order for damages to the unit - Section 67; and
2. 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.

Issue(s) to be Decided

Is the Landlord entitled to the costs claimed for damage to the unit?
Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: The tenancy of a furnished unit started on February 29, 2020 and ended by mutual agreement on October 24, 2020. Rent of $3,500.00 was payable on the 29th day of each month. At the outset of the tenancy the Landlord collected $1,750.00 as a security deposit and $1,750.00 as a furniture deposit. The Landlord received the Tenant's forwarding address by text on October 29, 2020 and on that date made its application. The Tenant then posted its forwarding address on the Landlord's door. The Landlord received the forwarding address on October 30, 2020. The Parties mutually conducted a move-in inspection with a completed report copied to the Tenant. The Parties mutually conducted a move-out inspection.

The Landlord states that the Tenant received a copy of the move-out inspection report as the Tenant had filled out its own copy at the inspection. The Landlord states that to the best of its knowledge it did not provide a copy of its report to the Tenant. The Tenant states that no move-out reports were filled out at the inspection and no move-out report was provided to the Tenant.

The Landlord submits in its application that the Tenant left damages to the property by failing to maintain the yard, damaging the laminate and damaging the interior paint. The Landlord submits that the Tenant also left the furnishings with smells. The Landlord claims a total of $7,000.00 for these damages. The Landlord states that it did not provide any allocation of costs for the damages other than the costs of $3,155.25 claimed to repair the yard. The Landlord states that it has not determined the costs being claimed for the remaining damages.

The Landlord states prior to the move-in the Landlord offered to have a landscaper maintain the yard at the Tenant's cost. The Landlord states that the Tenant verbally agreed to maintain the yard itself to include mowing, weeding and watering. The Landlord states that section 10(2)(a) of the tenancy agreement requires the Tenant to maintain the yard, including shrub trimming. The Landlord states that it also is reasonable to expect, given the amount of rent being paid, that the Tenant is required to maintain the yard. The Landlord states that in June 2020 the Tenant left the grass knee-high. The Landlord states that the neighbour also told the Landlord that the neighbour was mowing the lawn. The Landlord states that in August 2020 the grass and shrubs were dead. The Landlord states that it did not make any repairs to the yard until late September 2020 when the landscapers competed the work. The Landlord states that the 5-year-old cedar ball hedges along the front of the house were dead and had to be replaced. The Landlord provides photos of the yard taken at move-in and in August 2020. The Landlord confirms that the photos are not labelled to identify when they were taken. The Landlord confirms that the state of the yard at move-in is not

detailed in that report. The Landlord claims the landscaper's costs of $3,155.25 and provides the invoice.

The Tenant states that it never agreed to do any yard maintenance either before or after signing the tenancy agreement. The Tenant states that the yard grew out of control and that it was the Landlord's responsibility to maintain the yard. The Tenant states that it was not until June 2020 that the Landlord brought in a landscaper to trim trees, mow the lawn and do the weeding.

The Landlord states that it had always agreed to be responsible for trimming the hedges and could not come before June 2020 due to covid. The Landlord states that at this time only the hedges were trimmed, and the lawn was not mowed.

Analysis

Section 59(2)(b) of the Act provides that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Section 62(4)(a) of the Act provides that all or part of an application for dispute resolution may be dismissed if there are no reasonable grounds for the application or part. As the Landlord's application does not set out any monetary amounts being claimed as costs in relation to the flooring, paint and furniture and as the Landlord was unable to provide such details at the hearing I find that the Landlord has no reasonable grounds to claim costs beyond the landscaping costs. I dismiss, without leave to reapply, all the claims for damages to the unit except for the claims for landscaping costs.

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. Section (10)(2)(a) of the tenancy agreement provides as follows:

> The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant

> has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The tenant is not responsible for reasonable wear and tear to the residential property.

RTB Policy Guideline #1 provides that generally the tenant who lives in a single-family dwelling is responsible for routine yard maintenance, which includes cutting grass, and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. Given the Landlord's supported evidence of the state of the lawn at move-out I find on a balance of probabilities that the Landlord has substantiated that the Tenant breached the Act by failing to leave the lawn mowed at the end of the tenancy. As the tenancy agreement does not provide for any weeding or shrub trimming, I find that the Landlord has not substantiated that the Tenant breached the tenancy agreement in relation to these items and there is noting in the Act that requires a tenant to carry out such yard maintenance. While it may be accepted that some cedar balls had died during the tenancy the Landlord provided no evidence and made no submissions on how the cedar balls were damaged by the Tenant. Further there are no identifiable photos or details on the move-in condition report of the condition of the cedar balls at the onset of the tenancy and no copy of a move-out inspection detailing damage to the cedar balls. For these reasons I find that the Landlord has only substantiated costs for the lack of lawn mowing. As the invoice does not detail these particular costs, I find that the Landlord has only substantiated a nominal amount of **$100.00** for the Tenant's breach of the Act.

Section 36(2)(c) of the Act provides that the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations. Although the Landlord states that a move-out report was completed at the inspection no copy of that inspection report was provided as evidence. Given the Tenant's evidence that no report was completed or copied to the Tenant I find

on a balance of probabilities that the Landlord has not substantiated that it provided a completed move-out inspection report to the Tenant as required under the Act and that the Landlord's right to claim against the security deposit was therefore extinguished at move-out.

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's right to claim against the security deposit was extinguished and as the Landlord did not return the security deposit to the Tenant, I find that the Landlord must now pay the Tenant double the combined deposits totalling **$7,000.00** ($1,750.00 + 1,750.00 = 3,500.00 x 2 = 7,000.00).

Section 19(1) of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Section 1 of the Act defines a "security deposit" as money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property. As the Landlord collected an amount greater than half the monthly rent as security for liability to the unit, including the furniture that was provided with the unit, I find that the Landlord breached the Act. For this reason, I decline to award the Landlord recovery of the filing fee and I dismiss this claim.

Deducting the Landlord's entitlement of **$100.00** from the **$7,000.00** owed to the Tenant leaves **$6,900.00** to be paid to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$6,900.00**. 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 11, 2021

Residential Tenancy Branch