Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act of $1,190.00; and to recover the $100.00 cost of her Application filing fee.

The Landlord, the Tenant, J.S., and a co-tenant, K.B., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Landlord provided the Parties' email addresses in the Application. They confirmed these addresses in the hearing, and they also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on January 15, 2020, with a monthly rent of $1,250.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of $625.00, and no pet damage deposit. They agreed that the tenancy ended on December 28, 2020, as the Tenants said they found a better place to live.

The Parties agreed that the Tenant gave the Landlord his forwarding address by posting it on the Landlord's door on January 30, 2021. They agreed that they did not do a move-in condition inspection of the rental unit, nor fill out a condition inspection report ("CIR"). The Landlord said that the Tenants gave her no notice of their vacating the rental unit and as such, there was no opportunity for an inspection. She said the Tenants left the key under the mat.

The Landlord said that her claim is for compensation on two fronts. She said the first claim is based on the Tenants having used the lumber that was covering a pool for another purpose. She said the lumber is no longer usable for the intended purpose – to cover the pool. The Landlord is claiming $840.00 to replace the lumber.

The Landlord's second claim is for $350.00 that she said is the cost of having to clean the residential property at the end of the tenancy.

#1 COST TO COVER THE POOL → $840.00

The Landlord said:

> We bought the lumber on 2018, and the guy was asking $1,200.00 to put it onto the pool, and then I met a company that was doing it for $800.00, and he wanted cash. The lumber cost me $2,051.17 and they put it on the pool.
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> [The Tenants] didn't even tell me that they are building a smoke house. They cut it… now the lumber is not useful for putting on the pool. I had to ask for a repeat of [the lumber receipt]. On June 19 – he put a right date, but the wrong year. I got

> the lumber – he made a mistake with the year.
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> I told them to cover the pool and take your damage deposit. but they didn't do it. They say I'm cheating them. The way they took the house - I wanted back like that. I didn't even charge for the lumber, because they cut it up and I can't use it. I didn't get the replacement lumber, because it's going to cost me $2,051.17. He put 2021 instead of 2018 – asked for a replacement receipt, because I paid in cash in 2018, but I asked for the receipt in 2021, and he wrote 2021.

The Tenants said:

> When we were looking to rent the place; we noticed the covered pool, and we asked for permission to uncover it, so we could use it as a pool. They covered it in 2018. We took the mouldy old lumber that had been there since 2018. It's still there; it's fine. We were told we had permission to open this up and to use the pool. We were never told that there was a requirement to recover it. They told us that they had only covered it at the request of a tenant. A neighbour said it was a safety issue, because a child had drowned.
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> We had full permission to uncover it. They didn't put it back on, and they didn't pay someone to put it back on. They sold the house with the pool uncovered. They were the last ones to use it. They didn't say someone had to recover it, because they . . . when they submit a receipt with fake numbers on it…. She's acknowledged it now. I never cut any of the lumber. We had a hot tub room – we leaned the lumber against the canopy, and then leaned it up against the pool. We didn't do anything wrong. Their receipt isn't relevant to us and they didn't do a move out inspection.

Regarding the Landlord's claim that the Tenants made a smoke house out of the pool wood, the Tenants said: "I don't know what that means. We leaned the lumber – we had a picnic canopy. We had some of the sheets of plywood leaned up against the edges."

The Landlord said:

> They tear it down when moving, put it on the side, but used it to build a smoke house. They used the lumber to make it. They put it back, but they cut the lumber. It's not long enough to cover the pool. We didn't cover the pool, because we couldn't use that wood. They didn't ask any permission from me to build a smoke house.

The Landlord said she did not submit any photographs of the pool wood before or after the tenancy.

The Tenants said:

> They are trying to say they recovered the pool, but they have suffered no monetary loss based on this. There's no reason to make a claim against it. See the full sheets of plywood – half of it in one stack. Then further stacks in our photos; the photo number is attachment #4 – full sheets of plywood, and the other half shows the full sheets of lumber. It's in the same condition as when it was covering the pool, and it's in weather-damaged condition.

#2 CLEANING THE RESIDENTIAL PROPERTY → $350.00

The Tenants provided video walk-throughs showing the condition of the inside of the rental unit at the end of the tenancy. However, they did not review the condition of the inside of any appliances nor evidence that they cleaned behind the appliances. Further, the Tenants did not provide any videos of the outside of the residential property at the end of the tenancy.

The Landlord said:

> I put evidence there – the guy cleaned the house and all that dog hair, and the window wasn't cleaned. You have the City's letter proving I'm not lying. Cleaning up the leaves – you can see that they didn't clean the house. The City will charge me. Outside the rental unit and inside I took the pictures of what we swept. I cleaned the fridge, because it wasn't cleaned. I didn't claim – I was into it, because the City . . . even the basement guy was asked to move the fish tank, the trampoline, and the chair. He said, 'It all belongs to them; that's their fish tank. Nothing belongs to me - it belongs to them.' The fish tank and the wood boards – turned green and mouldy sitting there.

In answer to a question about the amount claimed, the Landlord said: "It takes at least eight hours, filling the leaves, trampoline, stove, and all that."

The Landlord submitted a letter she received from the City dated January 10, 2021, with the subject line: "Re: Untidy or Unsightly Premises at [residential property address]". This letter included the following points:

> Our records indicate that you are the registered owner(s) of the Property. A recent inspection has revealed that the Property is unsightly. . . . At the time of our inspection, there was an old stove and scattered garbage in the front yard, as well as empty aquariums and full garbage bags in the rear yard on the Property, making it unsightly.

The letter goes on to advise the Landlord that if she does not clean up the property to the City's specifications, then they will do it for her, but it will be at her expense.

The Tenants said:

> There were a few items - there was a stove in the front yard that belongs to the Landlord. That was the Landlord's stove. They brought a replacement and they asked us to take it in for them. We reminded them repeatedly to pick up their stove. It was two weeks after we moved out. The stove on the front lawn led them to go to the backyard. They are the downstairs' tenants. We have witnesses who can confirm that none of the belongings or the mess or the fish tank belong to us, but they belong to the downstairs tenant. Those things are not our responsibility to clean up. We took things to the dump and cleaned up responsibly like good tenants.

The Landlord said:

> The stove she called me – the door's not working. I brought another stove and tried to deliver it, but she said, no, we don't have time for delivery. I have a guy helping me – she said there's no room for it, so leave it at the front door.

The Landlord confirmed that the stove with the broken door that is or was outside belongs to the Landlord.

The Landlord submitted photographs of the residential property at the end of the tenancy, which include the following:

- Bins of leaves that they had swept;
- Dried leaves covering areas of the back of the house;
- An empty, mouldy fish tank;
- Bins and buckets left scattered; and
- Garbage left on an outdoor table.

The Landlord also submitted photographs from inside the rental unit showing doors left off closets. This was also evident in the Tenants' videos.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Before the Parties testified, I advised them of how I would analyze the evidence presented to me. I told them that a party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy

Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In this case, the Landlord must prove:

1. That the Tenant violated the Act, regulations, or tenancy agreement;
2. That the violation caused the Landlord to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the Landlord did what was reasonable to minimize the damage or loss.

{"Test")

#1 COST TO COVER THE POOL → $840.00

The Landlord provided evidence of what it cost her to cover the pool in 2018. However, she did not direct me to any costs she incurred to replace the wood used to cover the pool that she said the Tenants ruined for this purpose. Further, the Tenants moved out at the end of December 2020, and they submitted undisputed evidence that the pool had not been recovered as of March 21, 2021. In addition, the Tenants testified that the Landlord sold the residential property without having covered the pool.

I find that the Landlord has not established that she has proved the elements of the Test for the pool cover wood. I find that the Landlord has provided insufficient evidence to prove this claim on a balance of probabilities. I, therefore, dismiss this claim without leave to reapply.

#2 CLEANING THE RESIDENTIAL PROPERTY → $350.00

Section 32 of the Act states that tenants "…must repair damage to the rental unit or

common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant." Section 37 states that tenants must leave the rental unit "reasonably clean and undamaged".

Policy Guideline #1 helps interpret sections 32 and 37 of the Act:

> The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the *Residential Tenancy Act* or *Manufactured Home Park Tenancy Act* (the Legislation).
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> Reasonable wear and tear refer to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.
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> [emphasis added]

I find from the Tenants' videos that the rental unit was reasonably clean and ready for the next tenant(s), aside from a burned-out light bulb in a bathroom. However, the Tenants did not provide videos showing the condition of the appliances inside the suite, nor did they show the outside of the residential property at the end of the tenancy.

The Landlord said that it took eight hours to do the cleaning. I find from the Landlord's testimony that she was predominantly concerned with the condition of the outside of the residential property, as well as the refrigerator having been left unclean and a prevalence of dog hair in the unit.

The outside cleaning work would have included sweeping leaves and removing debris from the property. However, given that there was another tenant in the residential property during this tenancy, I find the Landlord did not indicate how she knew which items left outside belonged to which tenant – current or former.
The Landlord's cleaning claim is for $350.00, which comes to $43.75 per hour for the eight hours the Landlord said it took. I find a more reasonable and standard rate for cleaning is between $25.00 and $30.00. I find from the Parties' respective evidence of

the condition of the residential property at the end of the tenancy, that it would have taken approximately two and a half hours outside and two hours inside for a total of four and a half hours to clean the residential property to the Landlord's standard.

However, I find it more likely than not that the Landlord could not know which tenant was responsible for which items of debris left behind, and which tenants did which work outside. The Landlord did not provide a written statement from the downstairs tenant confirming which items belonged to him; regardless, I find it quite possible that he would say that all items belonged to someone else, so that he did not have to remove them when he moved. I find that the Landlord could not have known who was responsible for debris in the common area.

Further, the Landlord did not direct my attention to a section of the tenancy agreement in which the Parties agreed that the Tenants would take care of certain cleaning or tidying activities outside. The tenancy agreement indicates that there were no addendums added to it.

I find that the Tenants were living in what may have been a single-family dwelling at one point; however, given the presence of another rental unit in the residential property, I find that it was closer to a multi-family dwelling during the tenancy. I find that there is insufficient evidence to conclude that the Tenants had exclusive use of the outside areas of the residential property. Rather, I find it more likely than not that the outside area was a common area for all tenants. Accordingly, without direction in this regard in the tenancy agreement, there is insufficient evidence before me to determine which set of tenants was responsible for which outdoor cleaning, weeding, mowing, raking, or shovelling activities, if any.

I find that the Landlord has provided insufficient evidence to establish that the Tenants failed to clean the inside of the rental unit to a reasonable standard at the end of the tenancy. Further, I find that the Landlord has not submitted sufficient evidence to conclude that the Tenants were responsible for removing the outdoor debris and yard waste that was left behind. Accordingly, I dismiss the Landlord's claim without leave to reapply.

The Landlord still holds the Tenants' $625.00 security deposit, and therefore, I order the Landlord to return it to the Tenants in full as soon as possible. In this regard, I award the Tenant with a Monetary Order for $625.00 from the Landlord for the return of the security deposit, pursuant to sections 38 and 67 of the Act.

Conclusion

The Landlord is unsuccessful in her claims for compensation from the Tenants , as she failed to provide sufficient evidence that she incurred a loss from a violation of the Act or tenancy agreement by the Tenants. Further, the Landlord failed to provide sufficient evidence that the Tenants were responsible for the type of cleaning needed to be done at the end of the tenancy.

As the Landlord still holds the Tenant's $625.00 security deposit, I award the Tenant with a Monetary Order of $625.00 from the Landlord. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: July 06, 2021

Residential Tenancy Branch