Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNDL-S, FFL

Introduction

The Landlords seek the following relief under the *Residential Tenancy Act* (the "*Act*"):

- an order pursuant to s. 67 for compensation for monetary loss or other money owed;
- an order pursuant to s. 67 for compensation due to damage to the rental unit caused by the Tenant; and
- return of their filing fee pursuant to s. 72.

The Landlords advance their monetary claims by claiming against the security deposit.

H.H. and C.H. appeared as the Landlords. A.R. appeared as the Tenant.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlords advise that they served their application materials on the Tenant, which the Tenant acknowledged receiving without objection. Based on their acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* the Tenant was sufficiently served with the Landlords application materials.

The Tenant provided documentary evidence to the Residential Tenancy Branch, though I was advised that this had not been served on the Landlords. Rule 3.15 of the Rules of Procedure requires respondents to serve their evidence on the applicants, which must be received by the applicants at least 7 days prior to the hearing. As the Tenant's evidence was not served, I find it would be procedurally unfair to the Landlords to

include and consider it as part of this matter. Accordingly, the Tenant's evidence is not included and shall not be considered by me.

Issues to be Decided

1) Are the Landlords entitled to monetary compensation for loss or other money owed?
2) Are the Landlords entitled to monetary compensation for damage to the rental unit caused by the Tenant?
3) Are the Landlords entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant began the current tenancy on August 1, 2020.
- The Landlords obtained vacant possession of the rental unit on February 1, 2022.
- Rent of $1,025.00 was due on the first day of each month.
- The Tenant paid a security deposit of $525.00 to the Landlords.

The Landlord provided a copy of the tenancy agreement. The Tenant advises that she moved into the rental unit originally in 2018 with a co-tenant but signed the current tenancy agreement after her co-tenant vacated the rental unit.

The Landlord advises that the tenancy came to end following the sale of the residential property, with the new owner's taking possession on February 4, 2022. I am advised by the Landlords that the tenancy was set to end on January 31, 2022 but that the Tenant did not vacate until the day after.

The Landlords testified that there was a great deal of items left behind at the rental unit after the tenancy had ended. The Landlords' evidence includes photographs of various items left behind, including bicycles, children's toys and playsets, and a quad bike. The Landlords testified that the items were removed from the residential property and stored for two months at a total cost of $924.50. The Landlords' evidence includes an invoice

dated February 8, 2022 indicating a cost of $724.50 for the removal of the items and a storage fee of $100.00 per month for the following two months.

The Tenant did not deny leaving items behind at the rental unit, though indicates that the items in question were stored within an outdoor shed that had collapsed due to a snowstorm. The Tenant argued that it was difficult to move the items due to the snow.

The Landlords further testified that there were oil barrels left behind at the rental unit, which required special disposal as they were filed with hazardous materials. The Landlords indicate that the oil barrels were removed to a storage facility after which point a disposal company came to retrieve and dispose of the waste. The Landlords' evidence includes an invoice dated February 8, 2022 indicating the cost of removing the barrels was $140.00 and the cost of disposing of them with was $650.00.

The Tenant did not deny that there were oil barrels left behind at the rental unit at the end of the tenancy but argued that they did not belong to her. The Tenant testified that the oil barrels belonged to her former co-tenant and argued that the cost of their disposal is ultimately his responsibility.

The Landlords also seek the cost of cleaning the rental unit in the amount of $175.00, which is supported by a receipt dated February 6, 2022. The Landlords testified that the rental unit had not been properly cleaned at the end of the tenancy. The Tenant testified that the rental unit had or was undergoing upgrades prior to its sale. The Tenant acknowledged she did not clean the rental unit at the end of the tenancy and did not do so due to the upgrades.

The Landlords also seek to recover the cost of cutting the lawn during the tenancy. The Landlords testified that lawn maintenance was the Tenant's responsibility and that she did not cut the grass such that the Landlords retained the services of an individual to cut the grass. The total claim for this amount totals $470.00 as supported by receipts put into evidence by the Landlords.

The Landlords' evidence includes a letter dated February 13, 2022 which outlines the various amounts claimed, including the lawn maintenance expense which is described as follows:

> Your Rental Agreement required you maintaining the yard & lawn and keeping it clean to protect property's value, and you have violated your agreement by not

> performing any maintenance during your tenancy. You had been officially notified many times that yard works will be done by Maintenance Person at your expense if you do not mow the lawn, clean up trash and hazardous materials kept in property. The expenses of yardwork by Maintenance person reported to you and required payment on official Notifications sent on these dates: 08-23-2021, 09-20-2021, 10-02-2021.

The Tenant acknowledged cutting the grass was her responsibility and that she had received the invoices in question during the tenancy but did not pay them. The Tenant argued that the Landlords did not discuss this with her beforehand and that she should not be responsible for the cost as the Landlords had imposed it on her.

The Landlords evidence also includes a condition inspection report. I am advised by the Landlords that the move-in inspection report was completed in August 2020 when the Tenant assumed the tenancy after the co-tenant vacated the rental unit. The copy provided by the Landlords is signed by the Tenant, which she acknowledged during the hearing. I am told by the Landlords that a copy was provided to her.

The move-out inspection report is dated February 1, 2022 but is only signed by the Landlord. I am advised by the Landlords that the Tenant participated during the move-out inspection but refused to sign the report. The Tenant testified that she did not sign the move-out inspection report as there was no move-in inspection report. The Tenant further testified that the Landlords were angry as she was still in the rental unit on February 1, 2022.

The Tenant testified that she provided the Landlords with her forwarding address on February 3, 2022, which the Landlords confirm receiving.

Analysis

The Landlords claim various amounts against the security deposit.

Section 38(1) of the *Act* sets out that a landlord must within 15-days of the tenancy ending or receiving the Tenant's forwarding address, whichever is later, either repay a tenant their security deposit or make a claim against the security deposit with the Residential Tenancy Branch. A landlord may not claim against the security deposit if the application is made outside of the 15-day window established by s. 38. Under s. 38(6) of the *Act*, when a landlord fails to either repay or claim against the security deposit within

the 15-day window, the landlord may not claim against the security deposit and must pay the tenant double their deposit.

Under the present circumstances, the parties acknowledge that the Tenant provided her forwarding address on February 3, 2022. Upon review of the information on file and in consideration of Rule 2.6 of the Rules of Procedure, I find that the Landlords filed their application on February 15, 2022. Accordingly, I find that the Landlords filed their application within the 15-day window imposed by s. 38(1) of the *Act*.

I have considered the issue of extinguishment. However, the issue is not relevant under the circumstances. Policy Guideline #17 is clear that even if a landlord's right to claim against the security deposit for damages to the rental unit is extinguished, they may still claim against the security deposit for other money owed. The Landlords have done so under the circumstances. Given my findings below, whether the Tenant's right to the return of the security deposit is extinguished is moot.

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

Section 37(2) of the *Act* imposes an obligation on tenants to leave the rental unit in a reasonably clean and undamaged state, except for reasonable wear and tear, and to give the landlord all keys in their possession giving access to the rental unit or the residential property.

Looking first at the items left behind at the rental unit by the Tenant, I have little difficulty finding that the Tenant breached her obligation under s. 37(2) to leave the rental unit in a reasonably clean state by abandoning her personal property at the rental unit. The

Tenant did not dispute leaving her personal property behind at the end of the tenancy. Rather, she argued that snow prevented her from removing the items. Whether snow was present or not is not relevant. It does not absolve the Tenant from her responsibility under s. 37(2) to leave the rental unit, including the items left in the yard which she had access, in a reasonably clean state.

Further, the Landlords were left with the task of removing the items mere days before the purchasers took possession on February 4, 2022. The Landlords did not seem to have issue with removing the items despite the snow. Not is the snow not an excuse for the breach of s. 37(2) by the Tenant, it is not credible under the circumstances.

The Landlords seek the cost of removing the items and storing them for two months. I note that Landlords were acting as per their obligations under ss. 24 and 25 of the Regulations in removing and storing the items. The Landlords could not have reasonably mitigated their damages under the circumstances. I find that the Landlords have established a monetary claim for the removal and storage of the Tenant's personal property in the amount of $924.50 as supported by the invoice in the Landlord's evidence.

The Landlords also seek the cost of removing some oil barrels from the property. The Tenant argued that these items do not belong to her and ought to have been removed by her former co-tenant. I place little weight in the Tenants argument. The Tenant draws a distinction between when she moved in 2018 and when her co-tenant was removed from the tenancy agreement in the summer of 2020. The logic, so far as I understood it, was that she was not responsible for the items left behind when she took over the tenancy. That is a false distinction and is an attempt to absolve her from her obligations under s. 37(2) of the *Act*. Even if I were to draw a line between the tenancies, which I do not, the Tenant is jointly and severally liable under the tenancy agreement. In other words, items left behind by her former co-tenant are her responsibility.

I find that the Tenant breached her obligation under s. 37(2) to leave the rental unit in a reasonably clean state by leaving oil barrels behind at the property at the end of the tenancy. The Landlords have demonstrated through their invoices that they paid for the removal and disposal of the oil barrels at a cost of $790.00. The Landlords could not have mitigated their damages under the circumstances. I find that the Landlords are entitled to this amount.

The Landlords also seek the cost of cleaning the rental unit. The Tenant did not dispute that she did not clean the rental unit, arguing that she did not have to because there were upgrades done by the Landlords. The Tenant's argument is illogical as she had been living within the rental unit since 2018. The Landlords seek the cost of cleaning the rental unit and I find that they are entitled to this amount as the Tenant acknowledges not cleaning the rental unit at the end of the tenancy despite living there since 2018. The Landlords' evidence demonstrates that the cost of cleaning the rental unit was $175.00, which could not have been mitigated under the circumstances. The Landlords have demonstrated their entitlement to this amount.

Finally, the Landlords seek the cost for cutting the grass during the tenancy. The tenancy agreement put into evidence includes an addendum signed by the parties which clearly specifies that it is the Tenant's responsibility to "maintain the lawn within the property, by regularly mowing the lawn and keep it clean from trash". The Tenant acknowledges it was her responsibility.

I infer from the Tenant's testimony that she did not cut the grass during tenancy. The question is whether the Landlords can unilaterally impose the cost of having someone come in to cut the grass due to the Tenant's failure to do so. I am not convinced that the Landlords were permitted to do so under the circumstances.

I note that s. 32(3) of the *Act* imposes an obligation on tenants to repair damage to the rental unit caused during the tenancy. A lawn is not analogous to items otherwise damaged during a tenancy, such as a window. For example, had the Tenant broken a window during the tenancy and it been repaired at the Landlords' cost, I would have granted the Landlord the cost of repairing the window. However, grass grows, it dies, and it comes back.

Unilaterally cutting the Tenants grass is more akin to hiring a cleaner to come in and tidy the rental unit due to it being in an uncleanly state. The Landlords may certainly have issued warning letters, alleged a breach of a material term of the tenancy agreement and seek to end the tenancy, or take other such action. They may not, in my view, impose a cost on the Tenant without obtaining her consent beforehand.

Given this, I do not allow the Landlords' claim for the cost of the lawn maintenance during the tenancy. This portion of the claim is dismissed without leave to reapply.

Pursuant to s. 72(1) of the *Act*, I direct that the Landlords retain the security deposit of $525.00 in partial satisfaction of the total amount owed by the Tenant.

I find that the Landlords have established a monetary claim as follows:

Item	**Amount**
Removal/Storage of Personal Property	$924.50
Removal/Disposal of Oil Barrels	$790.00
Cleaning rental unit at end of tenancy	$175.00
Less security deposit to be retained by the Landlords	-$525.00
Total	$1,364.50

Conclusion

The Landlords have established a monetary claim, which when the security deposit is taken into account totals $1,364.50.

The Landlords were largely successful in their application. I find they are entitled to the return of their filing fee. Pursuant to s. 72(1) of the *Act*, I order that the Tenant pay the Landlords' $100.00 filing fee.

Taking the above into account and pursuant to ss. 67 and 72 of the *Act*, I order that the Tenant pay **$1,464.50** ($1,364.50 + $100.00) to the Landlords.

It is the Landlords' obligation to serve the monetary order on the Tenant. If the Tenant does not comply with the monetary order, it may be filed by the Landlords with the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 12, 2022

Residential Tenancy Branch