



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL -S, FFL

Introduction

This hearing dealt with a landlord's application for compensation for damage to the rental unit and authorization to retain the tenants' security deposit.

Both parties appeared and/or were represented at the hearing and the parties were affirmed. The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

I confirmed the tenants received the landlord's proceeding package and photographs via registered mail; however, the landlord did not send a detailed calculation or estimates or invoices to the tenants with the package as required.

The landlord had uploaded only one estimate in support of the amount claimed and the amount of the estimate (\$1134.00) was less than the amount claimed.

The tenants acknowledged they had received that same estimate from the landlord via email and they were prepared to respond to that evidence and the landlord's claim for lawn damage even though the estimate was not included in the proceeding package.

Given the lack of a detailed calculation and other estimates or invoices being served with the proceeding package, the property manager was given the choice to request withdrawal of this application, with leave to reapply, or to proceed but the claim would be limited to the amount of the one estimate provided. The property manager chose to

proceed with the claim in the limited amount of \$1134.00. I amended the application accordingly.

Issue(s) to be Decided

1. Has the landlord established an entitlement to compensation for damage to the rental unit, as amended?
2. Award of the filing fee.
3. Disposition of the security deposit.

Background and Evidence

The tenancy started on November 10, 2021 and ended on July 31, 2022. The rent was set at \$6200.00 per month. The tenants paid a security deposit of \$3100.00 that the landlord continues to hold pending the outcome of this proceeding. The rental unit was described as a single family dwelling.

The parties completed a move-in and move-out inspection report together. On the move-out inspection report the landlord recorded that all of the rental unit was in good condition with the exception of the grass that required cutting. The tenants signed the move-out inspection report to acknowledge they agreed with the landlord's assessment and responsibility for the cost to cut the grass. No amount was specified for the grass cutting or authorized for deduction from the security deposit on the move-out report.

On August 1, 2022 the landlord obtained an estimate from a lawn company, referred to by initials TFT, to cut the back yard grass, remove the debris, apply weed control, fertilize, overseed and aerate in the amount of \$1134.00. The landlord seeks to recover this amount from the tenants. Below, I reproduce the content of the estimate:

Item	Quantity	Price	Tax1	Line Total
Yard Cleanup	1.0	\$200.00	5.000%	\$200.00
Waste and Debris - Remove and Haul	1.0	\$40.00	5.000%	\$40.00
Weed Control	1.0	\$200.00	5.000%	\$200.00
Lawn Care - Overseeding	1.0	\$60.00	5.000%	\$60.00
Lawn Care - Fertilize	1.0	\$60.00	5.000%	\$60.00
Lawn Care - Aerate a Lawn	1.0	\$100.00	5.000%	\$100.00
Lawn Care and Maintenance(Bi-weekly)	7.0	\$60.00	5.000%	\$420.00
Subtotal:				\$1,080.00
Tax:				\$54.00
Past Due Amount:				\$0.00
Total Amount:				\$1,134.00

Notes

This estimate is for lawn repair and maintenance of season year 2022. The overseeding, fertilize and aeration will be scheduled during Fall to get a better result.

As for actual costs and work performed, the property manager testified that:

- TFT came to clean up the backyard by cutting the grass, raking it, and disposing of the debris at a cost of \$210.00 plus tax for a total of \$220.50.
- TFT attended the property in September 2022 to cut the grass and apply lawn seed.
- In April 2023 the landlord had a different company repair the back yard lawn at a cost of \$1197.02.

The tenants were agreeable to paying for the grass cutting and clean up that cost the landlord \$220.50 but did not agree to pay for weed control, fertilizing, overseeding, aeration, or lawn repair.

The property manager pointed to term 11 in the addendum to the tenancy agreement as the basis for seeking compensation from the tenants for costs to repair and maintain the lawn. Term 11 of the addendum states "Tenants are responsible for maintaining front and back yard on own cost."

The property manager argued that term 11 provides that the tenants are responsible for all costs associated with maintaining the lawn. The tenants stated that they understood "maintaining" the lawn to mean cutting the grass.

The property manager also submitted that the tenants are liable to pay for repairing the lawn because there was a section where the lawn was bare. The property manager attributed the bare section of grass to the tenants not watering the lawn and because they also had pets. The property manager acknowledged that she had failed to record the damaged lawn on the move-out inspection report, claiming she must have forgotten.

The tenants were of the position the grass in that area of the backyard died because that area receives full sun all day long without any shade, the ground under the grass was mostly sand, there was no sprinkler system installed, no water hose was provided, the landlord never instructed the tenants to water the lawn and they did not water the grass because they interpreted “maintaining” the yard to mean cutting the grass. The tenants did not believe having pets killed that section of grass as other sections of grass in the backyard lived.

Analysis

The landlord seeks to enforce term 11 of the addendum to the tenancy agreement. Section 6(3) of the Act applies to terms included in a tenancy agreement. It states:

- (3) A term of a tenancy agreement is not enforceable if
 - (a) the term is inconsistent with this Act or the regulations,
 - (b) the term is unconscionable, or
 - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

The parties have a different interpretation of term 11 of the addendum. To require a tenant to pay for all costs associated with maintaining a yard exceeds a tenant’s obligation. A tenant’s obligation to repair and maintain a property are found in section 32 of the Act. Below, I have reproduced the relevant paragraphs:

- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit 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.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

[My emphasis underlined]

Residential Tenancy Policy Guideline 1: *Landlord & Tenant – Responsibility for Residential Premises* provides policy statements and information pertaining to property maintenance. Policy Guideline 1 provides, in part:

This guideline is intended to clarify the responsibilities of the landlord and tenant regarding maintenance, cleaning, and repairs of residential property...

PROPERTY MAINTENANCE

...

3. 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.

...

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

As seen from above, a tenant is not responsible for absorbing all of the ordinary costs of a homeowner or act as the landlord's gardener. To require that of a tenant would conflict with the obligations under the Act and be unconscionable, making the term unenforceable. Therefore, I reject the property manager's argument that the tenants are liable to pay for all costs associated to maintaining the yard.

The word "maintaining", without further specification in term 11 may mean many different things. As a landlord has the burden to draft the tenancy agreement, it is upon the landlord to ensure the terms created clearly express the tenant's obligations under the term. Under common law, any ambiguity in a term of a contract will be interpreted against the drafter of the contract, which is the landlord. I find the tenant's interpretation of "maintaining" the yard to be consistent with Policy Guideline 1. Therefore, I hold the tenants liable to pay for cutting of the grass.

The tenants were agreeable to paying for the actual cost of \$220.50 to clean up, cut the grass and dispose of the debris that was incurred by the landlord on August 15, 2022 and I award this amount to the landlord as part of the tenant's obligation to maintain the yard.

As for the landlord's assertion the tenants are responsible for repairing the bare area of grass due to damage they or their pets caused, I find the landlord did not meet its burden to prove the tenants are responsible for damaging the lawn. Where one party provides a version of events in one way, and the other party provides a version of events that are equally probable, the claim will fail for the party with the onus to prove their claim.

I was provided photographs of the area but opposing theories for the death of the grass in that section of the backyard. I find the landlord's theory is no more likely than the tenant's theories. The landlord did not present evidence from a lawn care technician or other evidence to point to the tenants' actions, or that of their pets, as being the reason, the lawn died in that section of the backyard. Therefore, I do not hold the tenants liable to pay for the lawn repair.

In keeping with my findings above, I authorize the landlord to deduct \$220.50 from the tenants' security deposit.

I make no award for recovery of the filing fee as it is apparent from the move-out inspection report and the text message communications between the parties shortly after the tenancy ended that the tenants were agreeable to a reasonable deduction for grass cutting. I am of the view this dispute is a result of the landlord making additional claims against the tenants that were ultimately unsuccessful.

In keeping with Residential Tenancy Policy Guideline 17, I order the landlord to refund the difference of the security deposit of \$2879.50 to the tenants without further delay. Provided to the tenants with this decision is a Monetary Order in this amount to enforce against the landlord.

Conclusion

The landlord is authorized to deduct \$220.50 from the tenants' security deposit and the landlord is ordered to refund \$2879.50 to the tenants without delay. Provided to the tenants with this decision is a Monetary Order in the amount of \$2879.50 to enforce against the landlord.

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 18, 2023

Residential Tenancy Branch