



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDL-S, LRSD, FFL

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking a monetary order for damage to the rental unit or property, an order permitting the landlord to keep all or part of the security deposit or pet damage deposit, and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing, and the tenant was assisted by 2 Legal Advocates. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

The tenant has not provided any evidentiary material, and agrees that all evidence of the landlord has been received, all of which has been reviewed and the evidence and testimony I find relevant to the application is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Should the landlord recover the filing fee from the tenant?

Background and Evidence

The landlord testified that this fixed-term tenancy began on January 15, 2023 and was to revert to a month-to-month tenancy after January 31, 2024. The landlord is not sure when the tenant actually moved out of the rental unit, but when passing, the landlord realized that the house was empty. Rent in the amount of \$4,300.00 was payable on

the 1st day of each month. On December 17, 2022 the landlord collected a security deposit from the tenant in the amount of \$2,150.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is the upper unit of a house; the lower level was occupied by other tenants. A copy of the tenancy agreement has been provided for this hearing.

The landlord further testified that move-in and move-out condition inspection reports were completed at the beginning and end of the tenancy, and a copy has been provided for this hearing. The move-in portion is dated January 12, 2023, and the move-out portion is dated June 30, 2024. The landlord testified that the tenant signed both portions, but the day after the move-out portion was completed, the tenant said that the tenant didn't accept it. All details and numbers were clearly set out. The tenant did not indicate what amount of the security deposit the tenant agreed that the landlord could keep.

The landlord has provided a Monetary Order Worksheet setting out the following claims totaling \$2,166.50:

- \$210.00 for cleaning service;
- \$1,270.50 for gardening; and
- \$686.00 for a broken awning.

The landlord sent a team to professionally clean the rental unit and a receipt dated January 10, 2023 has been provided for this hearing. The landlord testified that the cost is now over \$400.00, but the landlord claims only the amount of the receipt showing a cost of \$210.00, which was the cost prior to the beginning of this tenancy. The tenant did not clean the rental unit at all at the end of the tenancy. The landlord did not provide a copy of the bill at the end of the tenancy, waiting until another tenant was obtained. The rental unit sat empty for a month.

The landlord has also provided a copy of a receipt for gardening. It shows a charge of \$1,210.00 for weeding and mowing and \$1,070.00 for trimming and cleaning. The landlord claims the amount of \$1,070.00, plus GST of \$53.50. The landlord testified that the tenant had agreed that the tenant and spouse were responsible for gardening, however the tenant advised the landlord that the tenant didn't agree for the second year of the tenancy because the tenancy had reverted to a month-to-month tenancy. The tenancy agreement doesn't indicate that and the landlord didn't change anything about gardening. The tenants didn't do much, maybe only the grass, but no weeding or trimming. The tenants were reminded. The tenant mentioned that the tenant's spouse was home, was free, and could clean the garden, and the landlord gave the tenants the phone number of a person to call

to do the work, but the tenants kept saying they would clean it “next weekend, next weekend.” Photographs have also been provided for this hearing.

With respect to the awning, it was not broken, but missing entirely. Photographs have also been provided for this hearing. The landlord testified that the awning was there when the landlord purchased the rental home in 2016. It faces the patio, and the landlord doesn’t know when it was installed. The landlord has provided 3 advertisements for its replacement.

The tenant testified that a realtor sent the condition inspection report to the tenant and to the landlord, who said that the rental unit looked good, and the tenants returned the keys. An email to the tenant says there were no issues beyond wear and tear.

The tenant cleaned everything again at the beginning of the tenancy and purchased supplies. The tenant spoke to the landlord’s realtor, asking that the realtor contact the tenant about it, but did not receive an answer. The tenant also left a voice message to the landlord asking for cleaning at the beginning of the tenancy, but didn’t get any answer. At the end of the tenancy the tenant cleaned the entire house.

The tenants mowed the grass maybe 2 or 3 times, but the tenants don’t have a lawn mower and had to borrow one. It takes about an hour, and was probably May 20, 2024 when it was last mowed by the tenants. The tenants also did the weeding. However, for the second year, the tenant told the landlord that due to the tenant’s spouse having allergies, he couldn’t do the gardening, and the landlord accepted that saying that the landlord had someone for \$25.00, which the tenant agreed to, but did not agree to \$1,200.00.

The tenants never used the electric awning. The tenant contacted the landlord 2 or 3 times about the remote control for it, but never got an answer. The tenants did not force it open, and couldn’t reach it. The tenant testified that the house is very old, and the tenant does not know what happened to the awning or remote control.

SUBMISSIONS OF THE LANDLORD:

The landlord wanted the house as it was at the beginning of the tenancy, respecting cleaning, gardening, and wanted to be fair and wanted the tenants to take the responsibility. The landlord cleaned the house professionally every time that tenants rent and gardening. The house is 100% clean at the beginning of the tenancies. The landlord was not there when the cleaner attended, but the landlord wanted the tenants to clean the rental unit at the end of the tenancy.

SUBMISSIONS OF THE TENANT'S ADVOCATE:

The tenants bought cleaning supplies at the beginning of the tenancy, left a voice message to the rental manager, and then cleaned again, which is corroborated by the condition inspection report done by the rental manager. The move-out portion states "Fair", and there is no comment about cleanliness issues. The email sent to the tenant says there were no issues except wear and tear. The landlord has not provided any evidence or a receipt except for the cleaning receipt at the beginning of the tenancy. The awning was old, and the evidence provided by the landlord are only quotes, based on new awnings today. The landlord purchased the rental home in 2016 or 2017 and does not know when it was installed. The tenant said it didn't work at all and was never used, and communicated that to the landlord. The landlord's claim is unsupported by evidence that the tenants caused damage or reasonable evidence of the cost, or that the landlord suffered any loss; a new awning has not yet been purchased. With respect to gardening, the tenant borrowed a lawn mower, and the tenant's husband was struggling with health issues and told the landlord they wouldn't do it anymore, but did so on May 25, 2024, and said they would weed as well. If there was 1 month of accumulation of grass and weeds, it is grossly unreasonable, and were quoted \$25.00 per hour for a person that the landlord recommended. The landlord hired a team to do quite extensive refreshing of gardens and trees. The landlord had the work done before the tenants moved out, denying the tenants an opportunity to do it. It is excessive and the landlord did not mitigate. The tenant agreed that the condition inspection report at the end of the tenancy represented the condition of the unit, and there is a spot for parties to insert an amount that the tenants agreed for the landlord to keep from the security deposit, but there is no amount written there.

Analysis

Where a party makes a monetary claim for damage or loss as against another party, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

Also, the *Act* specifies that the condition inspection reports are evidence of the condition of the rental unit at the beginning and end of the tenancy. I have reviewed the reports, and I agree with the tenant's Advocate that there are no notations that the rental unit was not clean at the end of the tenancy. There are comments by the landlord at the

end of the report, which states that the garden has been neglected for an entire year; the awning is currently broken; the kitchen faucet is not working, and, "I am not satisfied with the quality of your cleaning." The landlord testified that the tenants didn't clean at all at the end of the tenancy, but the condition inspection report does not indicate that. Therefore, I dismiss the landlord's claim for cleaning.

With respect to gardening, whether or not the tenants told the landlord that they would no longer take responsibility for that after the tenancy reverted to a month-to-month tenancy, is not for the tenants to decide. The tenancy agreement specifies that it is the tenants' responsibility, which does not change for the duration of the tenancy unless the parties otherwise agree in writing. I accept that the tenant's spouse had allergies, however there is no evidence or testimony that the other tenant could not have done so. The move-out condition inspection report states: "Gardening not done; the mowing the lawn portion and the weeding belongs to the tenant, Landlord to nego with tenant to deduct from the deposit." I have reviewed the Invoice provided by the landlord, which is dated July 2, 2024 and sets out "Weeding and Mowing" at a cost of \$1,210.00, and "Trimming and Cleaning" at a cost of \$1,070.00, and GST of 5%. The landlord claims the lower amount for trimming and cleaning of \$1,070.00, and GST on that amount is \$53.50, for a total of \$1,123.50. The landlord also testified that the landlord reminded the tenants of that obligation, which I find is mitigation. I find that the landlord has established that claim.

With respect to the awning, any amount of compensation is meant to put the landlord in the same position as the landlord would be if no damage or loss had occurred. There is no evidence in the landlord's material to indicate how old the awning is, or what shape it was in at the beginning of the tenancy, only that there were 3 remotes. I am not satisfied that the landlord has established elements 2 or 3 in the test for damages, and I dismiss the landlord's claim for the awning.

Since the landlord has been partially successful with the application, the landlord is also entitled to recover the \$100.00 filing fee from the tenant.

The landlord testified that the tenant provided the landlord with a forwarding address by email on July 14, 2024 which was received by the landlord on July 20, 2024, and that permission to serve documents by that method was not agreed to previously. The Act and the regulations state that a party may only serve legal documents by email if the parties had previously agreed in writing.

The landlord currently holds a security deposit in the amount of \$2,150.00, and having found that the landlord has established a claim of \$1,223.50, I order that the landlord

return the balance of the security deposit to the tenant within 15 days of receiving the tenant's forwarding address in writing.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the sum of \$1,223.50 from the security deposit, and to return the balance of the security deposit to the tenant within 15 days of receiving the tenant's forwarding address in writing.

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: September 26, 2024

Residential Tenancy Branch