Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, MNSD, FF, O

Introduction

This hearing was convened in response to an application by the Landlord and a cross application by the Tenant. **The Landlord** applied for dispute resolution on February 15, 2011 for:

- A Monetary Order for damage to the rental unit, and for money owed or compensation for damage or loss – Section 37;
- An order to retain the security deposit- Section 38;
- Recovery of the filing fee – Section 72.

The Tenant applied for dispute resolution on March 9, 2011for:

- Return of the security deposit – Section 38;
- Recovery of the filing fee – Section 72; and
- Other.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?
Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on May 14, 2009 and ended on January 31, 2011. Rent in the amount of $1,250.00 was payable in advance on the first day of each month. The rental amount was at the current market rate. At the outset of the tenancy, the Landlord

collected a security deposit from the Tenant in the amount of $625.00. No pet deposit was taken although the Tenants had a dog and the Landlord was aware of this.

The Tenant states that in April 2010, the Landlord informed the Tenants of her interest in selling the property and that they agreed that if the Tenants were to purchase the property, the Landlord would use up to one year's worth of half the rent paid for a down-payment. The Tenant states that both a mortgage broker and a bank were consulted about the possibilities of qualifying for a mortgage. Both the Broker and the bank advised the Tenants to obtain the rent-to-own agreement in writing. The Tenants did not do this. The Tenants were also provided information at this time on how to establish their credit for a purchase nine to twelve months later. In July 2010, the Tenants informed the Landlord that they were working towards a purchase of the property by approximately May 2011.

At the end of December 2010, the Landlord informed that Tenants that she would be moving back into the unit and that the Tenants would have to move-out by the end of February 2011. At this time, the Landlord informed the Tenants that she would consider selling the property to the Tenants but that due to her personal situation, the purchase would have to be soon. The parties did not at this point discuss the terms of the purchase or the rent-to-own. The Tenant states that they were unable to make a purchase before May 2011 and moved out of the unit. The Landlord states that the rent-to-own discussion was not an agreement but only a discussion for consideration purposes. The Tenant claims $5,000.00 as compensation for breach of the rent-to-own agreement representing a refund of $625.00 for each of the eight month's rent paid to the end of the tenancy.

On January 31, 2011, the Landlord and Tenant completed a move-out inspection and the Tenant provided the Landlord with their forwarding address. The copy of the inspection was not received by the Tenants until they received the Hearing package for this Hearing after March 9, 2011. The Tenants claim a return of their damage deposit. The condition report for the move-out notes a clean and undamaged unit except for a

broken stained glass window, and damage to the landscaped garden and yard, with flattened perennials and plants that “appear to be gone”.

The Landlord states that after completing this report and doing further inspection, she noted that additional cleaning was needed to the inside and outside of the unit, including removal of the carpet, which the Landlord states was 10 years old and had a bad odor. The Tenants state that they hired a professional cleaner and also steam cleaned the carpets at move-out. The Tenants provided a letter from the cleaner that states her work is guaranteed and that should there have been any problems, she would have returned to clean for the Tenants. The Tenants state that the carpets had a bad smell at move-in such that they re-cleaned the carpet at move-in to ensure they were clean.

The Landlord states that the Tenants left the garden and yards in a damaged state and that the Tenants had puppies that caused damage to the lawn area in the back. The Landlord further states that the Tenants did nothing to maintain the yards. The Tenants state that during the tenancy they took great pride in the yard and mowed the lawn, weeded the flowers, replaced dirt that had eroded, and seeded the back yard in an attempt to get rid of the moss. The Tenants also removed a dead tree from the front yard that was there at move-in and which the Landlord did not remove as asked. The Tenant states that the area referred to by the Landlord as having flattened or missing plants was in the area where they removed a large and spreading weed. The Tenant also states that the clematis plants only appeared to be dead over the winter months but that they return to full bloom every year. The Tenant states that the back yard had flooded twice during November and December 2011 causing the lawn area to appear muddy and damaged and that the move-out also created a big mud patch. The Tenants states that the puppies were foster puppies and were only at the residence for a few weeks, stayed in a penned area in the kitchen and deny that the puppies caused any damage to the yard. Finally, the Tenants provided letters from friends that note the garden and yards to be well-maintained and a reference letter from the Landlord herself dated January 2, 2011 wherein she states “the front yard looks kept up and tidy”.

The Landlord states that she designed and created the stained glass window that was broken and provided an estimate for the repair and replacement cost of $208.92. The Tenants state that they were not responsible for the break in the window and provided a letter from a general contractor who examined the front door and stained glass window. This contractor provides his opinion that the crack would have been caused by damaged weather stripping around that door that caused more air to come through the door when opened and closed and further that “one swift shut of the door and the glass can crack even more”. It is unknown whether the Tenants advised the Landlord of problems with the damaged weather stripping.

The Landlord claims costs for cleaning the unit, removing and disposing of the carpet, making landscaping repairs to the front and back yard including the replacement of plants and painting of planters and the repair or replacement of the stained glass window in the total amount of $1,972.42.

Analysis

A contract respecting land or a disposition of land is required to be in writing; or, if a contract is oral, the party opposite the party alleging the contract must act consistently or in acquiescence with the allegation of the contract; or, the person alleging the contract has, in reasonable reliance on the contract, so changed its position that an inequitable result can only be avoided by enforcing the contract. In this case, there is no written contract for the rent-to own agreement alleged by the Tenant, nor has the Landlord acted in any way consistent with the allegation of such a contract. Finally, the Tenants have not changed its position in relation to the property such that any inequity has arisen. Accordingly, I cannot find that a contract exists between the Tenant and Landlord for a rent-to-own purchase of the property. As there is no contract, there cannot be a finding of a breach of contract allowing a repayment of any portion of the rent should the property not be purchased by the Tenant. I therefore dismiss the Tenants’ application in relation to a claim to a portion of the rent paid over the 8 months preceding the end of the tenancy.

Section 24 of the Act provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Section 18 of the Residential Tenancy Regulation (the "Regulation") requires that a copy of the inspection report be provided to the Tenant within 7 days after the condition report is completed. Since the Landlord did not sent the tenant a copy of the report as required, or by February 15, 2011, the right of the Landlord to claim against the security deposit is therefore extinguished.

Section 38 of the Act operates to allow a Landlord to keep a damage deposit for longer than 15 days where an application has been made by the Landlord claiming against the deposit. If that right to claim against that deposit has been extinguished however, the Landlord must return the security deposit within 15 days. If the Landlord does not return the deposit within that time frame, the Landlord must pay the tenant double the amount of the security deposit. This section does not stop a Landlord from making an application for damages. Since the Landlord's right to claim against the security deposit has been extinguished due to the failure of the Landlord to remit the move-out condition report, and since the Landlord did not return the security deposit to the Tenants within 15 days of their move-out, I find that the Landlord must pay the Tenants double the security deposit of $625.00 plus interest in the amount of $1,250.00.

Section 21 of the Regulation provides that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless either the landlord or tenant has a preponderance of evidence to the contrary. Although the Tenants provided evidence that the break in the glass window was caused by damaged weather stripping, without evidence that the Landlord knew about this defect in order to mitigate such a loss and given the condition report for the move-out, I find that the Landlord has established a loss for the broken stained glass window in the amount of $208.92. In relation to the restoration of the back yard, given the move-out report and considering the evidence of the Tenant in relation to the work completed on

the yard and the time of year that the condition report was done, I find that the damage to the yard was not as extensive as claimed by the Landlord. I do find however, given the acknowledgement of the Tenant in relation to the move-out damage to the lawn, that the Landlord has established a loss in relation to the lawn and is eligible for a nominal award of $200.00 for the replacement of dirt and lawn in the muddy patch. Given the condition report and evidence of the Tenant regarding the cleaning done at move-out, and the age of the carpet, I cannot find that the Landlord has substantiated any loss for cleaning costs or carpet replacement. In total, I find the landlord eligible for a total award of $408.92 for damages to the yard and house.

As the award to the Tenants exceeds the award to the Landlord, the Tenants' award is reduced by the Landlord's award with an amount remaining for the Tenants of **$841.08** ($1,250.00 – 408.92). As each party has been found eligible for an award, I make no award in relation to a recovery of the filing fee for each party.

Conclusion

As the Tenant has established a claim amount greater than the Landlord, **I grant** the Tenant an Order under Section 67 of the Residential Tenancy Act for the difference in the two entitlements in the amount of **$841.08.**

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 *Residential Tenancy Act*.

Dated: April 28, 2011.

Residential Tenancy Branch