Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MND, MNR, MNSD, MNDC, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, unpaid rent; compensation for damage or loss under the Act; to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied of return of their pet and security deposit, plus filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of $2,194.00 for damage to the rental unit?

Is the landlord entitled to compensation for damage of loss under the Act in the sum of $170.22?

May the landlord retain the deposits paid?

Are the tenants entitled to return of the deposits paid?

Is either party entitled to filing fee costs?

Background and Evidence

The tenancy commenced on March 1, 2011; rent in the sum of $1,200.00 was due on the first day of each month. A security and pet deposit in the sum of $600.00 each was paid. A move-in and move-out condition inspection report was completed; the tenants signed the report at move-out indicating they did not accept the landlord's assessment of the state of the unit.

Copies of the inspection reports, tenancy agreement; emails; utility bills and a lawn repair estimates were among the documents supplied as evidence.

The landlord confirmed receipt of the tenant's forwarding address on January 15, 2012, when the condition inspection report was completed. The landlord claimed against the deposits on February 6, 2012.

The landlord has made the following claim:

Materials to paint unit and clean stove – estimate	562.00
Hydro	35.22
Gas	110.00
Replace lawn	1,232.00
Estimate photos	25.00
TOTAL	2,364.22

During the hearing the tenant agreed to the amounts claimed by the landlord for the removal of dog waste; $25.00; hydro $35.22 and gas bill in the sum of $110.00. The tenants also agreed that the new door would require another coat of paint; they had given it 2 coats.

The landlord testified that the unit was painted the year prior to the start of the tenancy. The tenants installed some shelving and left holes in the wall that must be filled, the bedroom wall had a stain, 1 door had been damaged and replaced by the tenants, but it required painting. The landlord supplied photographs of 6 nail holes made in the wall; several show drywall anchors that were used. The landlord found this to be an excessive number of holes.

The tenants had a large dog and had signed a pet clause in the tenancy agreement which set out very specific expectations in relation to the dog's use of the yard and the tenant's responsibilities. This clause was discussed throughout the hearing; however, it was not until toward the conclusion of the hearing that the tenant incinerated she had not received a copy of that portion of the tenancy agreement until the evidence package had been given to her.

The landord responded that her copies of the blank tenancy agreements are pre-stapled; they include the portion of the agreement that records the payment of the pet deposit and that the tenant was given a copy of this page of the agreement, clause 16, at the start of the tenancy.

The landlord stated that the tenant's allowed their dog to defecate and urinate on the lawn to the point that the lawn was seriously damaged. The landlord supplied a copy of a January 27, 2012, estimate completed by a lawn company, proposing costs in the sum of $672.00 for soil and seed; plus $1,232.00 for turf costs.

The January 27, 2012, estimate was sent to the tenants as part of a letter written by the landlord. Outlining the claim against the deposits; the landlord charged the tenants $200.00 for labour, utility costs and determined that the tenants were entitled to $254.78 from the security deposit. The landlord indicated that the tenants were responsible for the cost of soil and seed for damage caused by their pet and that the $600.00 pet

deposit would satisfy the estimated cost of $672.00. The landlord did not charge the tenants for the cost of pet waste removal and issued the tenants a cheque in the sum of $254.78, which the tenants have yet to cash.

The landlord provided photographs of the lawn, which showed a number of areas that had yellowed and that were bare as a result of the damage caused by the tenant's pet. The move-in condition inspection report indicated that the lawn was in good condition. The landlord submitted that the tenants should pay the cost of turf, in the sum of $1,232.00 vs. the cost of soil and seed in the sum of $672.00

The tenant responded that the landlord originally wanted $200.00 for labour costs and that she thought the landlord wanted $56.00 for the painting and labour, not $562.00. The tenants did remove a shelf they and installed; they had used the wall studs and drywall screws, so that damage was not caused to the walls. The tenants did not make an unreasonable number of holes in the walls.

The tenant stated that the lawn had drainage problems which resulted in the lawn damage. The tenant supplied copies of photographs taken from the neighbouring property after they vacated, which showed bare areas and water in the yard. The tenant stated the lawn was always muddy and saturated with water. The tenant referred to the move-out condition inspection report which indicated that the lawn needed "treatment and fumigation."

The tenant denied the dog dug in the yard; that the muddy areas were where moss had been disturbed through normal wear and tear to the lawn. The tenant submitted that landlord had agreed the dog could urinate in the area next to the cement patio and that if the landlord had not wished to have a pet urinating in the yard it should have been in the lease agreement.

The tenant supplied a copy of an email from a lawn company they contacted, who indicated that a lack of sunlight ad good drainage would render the lawn susceptible to damage; requiring annual reseeding. The tenant's expert viewed the lawn and indicted that it would be a waste to install turf and that reseeding would require constant maintenance.

Initially the tenant stated that she found the pet clause unclear; the tenant also testified that their copy of the tenancy agreement did not include the pet clause portion.

The pet clause included a number of specific instructions in relation to the use of the yard, such as: the backyard was not to be used as a run for the dog; pets could not soil the backyard; and if the pet damaged the lawn by digging or soiling, the tenant would be held responsible for replacement or to pay the cost to have the area replaced.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Residential Tenancy Branch policy suggests that a dispute resolution officer may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the landlord.

The tenant has agreed to costs for dog waste removal, utilities and a 2nd coat of paint to a door. I find that a reasonable nominal cost for a coat of paint to the door is $35.00.

First, I will consider the deposits held in trust by the landlord. Section 38(1) of the Act determines that the landlord must, within 15 days after the later of the date the tenancy ends and the date the landlord received the tenant’s forwarding address in writing, repay the deposit or make an application for dispute resolution claiming against the deposit. If the landlord does not make a claim against the deposit paid, section 38(6) of the Act determines that a landlord must pay the tenants double the amount of security deposits; $2,200.00.

The parties agreed that the tenancy ended on January 15, 2012, and that the landlord received the tenant’s forwarding address on that date; as indicated on the condition inspection report.

The landlord made deductions form the deposit and on January 27, 2012, mailed a cheque to the tenants, in the sum of 254.78.

On February 6, 2012; 21 days after the tenancy ended, the landlord claimed against the deposit.

Therefore, as the tenants did not agree in writing at the end of the tenancy to deductions from the deposit and the landlord failed to return the deposits or claim against them within 15 days of January 15, 2012, I find, pursuant to section 38(6) of the Act, that the tenants are entitled to return of double the security and pet deposits in the sum of $2,400.00

I find that the landlord’s claim for materials for painting, cleaning the oven and labour is dismissed. The photographs supplied by the landlord showed a small number of nail holes in the walls, which are part of normal day-to-day living. There was no evidence before me that the tenants had made an unreasonable number of holes in the walls. There was no evidence before me that the tenants had caused damage to the unit walls, requiring paint. Further, the landlord supplied no verification of the costs she has claimed, such as paint receipts, supplies receipts or a professional estimate for the work claimed. Therefore, I find that the portion of the claim for painting, cleaning and materials is dismissed.

In relation to the lawn; I have rejected the tenant's submission that they did not receive a copy of the pet clause. The tenant did not mention this in her written submission, other than a reference that the landlord should have mentioned this prohibition on pets urinating in the yard, as a term of the lease. Even if the tenant had not seen the pet clause, I would find that the tenant's pet did cause damage to the backyard. The photographs clearly showed areas of lawn that had been killed. The move-in inspection report indicated that the lawn was in good condition and that by the end of the tenancy it was not.

I have accepted the opinion of the tenant's expert that re-seeding, even though extra maintenance would be required, was the preferred method of repairing the yard. I have also accepted the tenant's submission that the lawn was prone to water logging and that some of the damage, such as muddy areas could have been the result of water. Therefore, I find that the tenants are responsible for 50% of the cost of soil and seed, to take into account the damage caused by the dog urinating on the lawn. The balance of the claim for lawn repair is dismissed.

The claim for photographs is dismissed, as they are costs incurred for preparation for the hearing, not the direct result of a breach of the Act.

Therefore, the landlord is entitled to the following:

	Claimed	Accepted
Landlord labour to clean and paint	400.00	35.00
Hydro	35.22	35.22
Gas	110.00	110.00
Replace lawn	1,232.00	336.00
Estimate photos	25.00	0
TOTAL	2,364.22	516.22

As each application has some merit, I decline filing fee costs to either party.

I find that the landlord is entitled to retain the tenant's security deposits in the amount of $516.22 in satisfaction of the monetary claim.

I Order the landlord to return the balance of the deposits, in the sum of $1,883.78; less $254.78, previously returned to the tenants: $1,629.00.

Conclusion

I find that the landlord has established a monetary claim in the sum of $516.22 for damage to the rental unit. The balance of the landlord's claim is dismissed.

The tenants are entitled to return of double the $1,200.00 in deposits held by the landlord.

The landlord will retain $516.22 from the deposits held in trust.

I find that the tenants have established a monetary claim, in the amount of $1,629.00, which is comprised of double the deposits paid, less the amount owed to the landlord, less the amount previously paid to the tenants.

As each application has merit neither party is entitled to filing fee costs.

Based on these determinations I grant the tenants a monetary Order in the sum of $1,629.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia 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 03, 2012.

Residential Tenancy Branch