Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that the Landlord's Application for Dispute Resolution and the Notice of Hearing were mailed to the Tenant, via registered mail, on June 27, 2013. Both Tenants were present at the hearing.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that the Tenant's Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant wishes to rely upon were mailed to the Landlord, via registered mail, on September 10, 2013. The Landlord confirmed that both Landlords were served with the Application for Dispute Resolution. The Landlord stated that she is representing the male Landlord at the hearing. The Landlord acknowledged receipt of the documents submitted as evidence by the Tenant and they were accepted as evidence for these proceedings.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant by registered mail. The Tenant acknowledged receipt of the Landlord's evidence, with the exception of an estimate from a painting company. The Landlord's documents, with the exception of the estimate, were accepted as evidence for these proceedings.

The estimate from the painting company was described to the Tenant. The Tenant acknowledged the information on the estimate. The Tenant declined the opportunity for an adjournment for the purposes of responding to this document or physically viewing the document.

The Landlord and the Tenant were provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions. Although the Tenant had witnesses available at the start of the hearing, the Tenant declined the opportunity to call these individuals when given the opportunity to do so.

Issue(s) to be Decided

Is the Landlord is entitled to compensation for staining a fence; is the Tenant entitled to compensation for a variety of labour performed at the rental unit; is the Tenant entitled to compensation for the Landlord storing property at the rental unit; is the Tenant entitled to compensation for a missing barbecue cover; and should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on August 01, 2011; that it ended on June 15, 2013; that rent was $2,250.00; that the Tenant paid a security deposit of $1,125.00; that a condition inspection report was completed at the start of the tenancy; that a condition inspection report was completed at the end of the tenancy; and that the male Tenant signed the condition inspection report that was completed at the end of the tenancy in the space a tenant is supposed to sign when the tenant is authorizing a landlord to retain all or part of the security deposit.

The male Tenant stated that when he signed the condition inspection report he did not understand what he was signing and he did not intend to authorize the Landlord to keep any portion of the security deposit. The Landlord stated that the male Tenant did not agree to allow the Landlord to keep any portion of the security deposit when they were completing the condition inspection report and she believes he did not understand what he was signing when he signed that area of the condition inspection report.

The Landlord is seeking compensation, in the amount of $3,759.00, to strip and re-stain the fence. The Landlord and the Tenant agree that on March 24, 2012 the Tenant asked for permission to stain the fence; that the Landlord agreed, but indicated that she first wished to discuss the proposal with her husband, the neighbours, and the City of Surrey and that she wished to confirm the colour; that the Landlord never informed the Tenant that a colour had been approved; and that the Tenant stained the fence in July of 2012.

The Landlord stated that the fence has not yet been painted, although she has an estimate for stripping the stain from the fence and staining it again, in the amount of $3,580.00 plus tax.

The male Tenant stated that he spoke with the Landlord on two occasions and attempted to have her pick a colour for the fence; that she never picked a colour; that he painted the fence a colour that is similar to the trim of the house; and that he selected the colour without confirming his choice with the Landlord. The Landlord stated that she does not recall the Tenant speaking with her about the fence after March 24, 2012 until after it was painted.

The Landlord submitted photographs of the fence after it had been stained by the Tenant.

The Tenant is seeking compensation for the cost of staining the fence.

The Tenant is seeking compensation for the cost of building a storage loft. The Landlord and the Tenant agree that the Landlord did not ask the Tenant to build the storage loft nor did the Landlord offer to compensate the Tenant for building the loft.

The Tenant is seeking compensation for the cost of fertilizing the lawn, aerating the lawn, and spreading bark mulch. The Landlord and the Tenant agree that the Tenant was required to maintain the yard as one of the terms of the tenancy agreement but that the Landlord did not ask them to fertilize the lawn, aerate the lawn, or add bark mulch.

The Tenant is seeking compensation for repairing damage to a wall in the dining room. The parties agree that in March of 2012 the Landlord removed art from the dining room walls and that the holes from hanging the art were not repaired by the Landlord. The parties agree that the Tenant offered to repaint the wall; that the Landlord agreed the Tenant could repaint the wall; and that there was no agreement that the Tenant would be compensated for painting the wall.

The Tenant is seeking compensation for time spent helping the Landlord move personal property out of the rental unit in March of 2012. The parties agree that they did not discuss payment in exchange for helping the Landlord remove the property.

The Tenant is seeking compensation for time spent helping to resolve a problem with the washing machine, which included “trouble shooting” and waiting for the appliance technician. The parties agree that they did not discuss payment in exchange for helping the Landlord with this repair.

The Tenant is seeking compensation for being unable to use a portion of the rental unit because the Landlord had personal property stored in the unit. The Landlord and the Tenant agree that prior to the start of the tenancy there was an understanding that the Landlord would be storing personal property in one of the bedrooms for an indeterminate period of time; that when the tenancy began the Landlord also had property stored in front of this bedroom and in a den; and that when the tenancy began the Tenant did not object to the additional items being stored in these locations.

The female Tenant stated that they did not ask the Landlord to move the additional property until sometime near the beginning of February of 2012 and that they did move it on March 17, 2012. The Landlord stated that they were never asked to remove the additional property and that it was removed on March 17, 2012.

The parties estimate the total square footage of the house to be 2,900 square feet and that the additional property was stored in approximately 120 square feet of space.

The Tenant is seeking compensation for replacing a barbecue cover. The Landlord and the Tenant agree that when this tenancy began the Tenant was permitted to use a barbecue that was being stored at the rental unit; that the barbecue had a cover on it a the start of the tenancy; and that when the Landlord retrieved the barbecue they took the cover that was on the barbecue.

The female Tenant stated that they purchased a new barbecue cover after this tenancy began; that they removed the Landlord's barbecue cover and stored it in the basement; that they have since discarded the barbecue cover stored in the basement; and that they never informed the Landlord that they had taken the wrong barbecue cover until they filed this Application for Dispute Resolution.

The Tenant is seeking compensation for one month's rent because they were asked to leave the rental unit early. The Tenant bases this claim on section 51(1) of the *Act.* The Landlord and the Tenant agree that the Landlord informed the Tenant that they would like to move back into the rental unit prior to the end of the fixed term tenancy; that if the Tenant wished to vacate the rental unit prior to the end of the fixed term of the tenancy they could do so, providing they gave the Landlord one month's notice; that on May 14, 2013 the Tenant informed the Landlord, via email, that they would vacate the rental unit on June 15, 2013; that the Tenant did vacate the rental unit on June 15, 2013; and that the Tenant was never served with a formal notice to end the tenancy pursuant to section 49 of the *Act.* A copy of the email dated may 14, 2013 was submitted in evidence.

Analysis

On the basis of the undisputed evidence that the Tenant did not intend to give the Landlord written authorization to retain any portion of the security deposit, I find that the

condition inspection report that was completed at the end of the tenancy does not serve as written authorization to retain any portion of the deposit.

On the basis of the undisputed evidence, I find that the Tenant stained the fence without the explicit consent of the Landlord. Although the Landlord agreed, in principle, that the Tenant could stain the fence, it is clear that both parties understood that the consent was contingent on the Landlord selecting the colour of the stain. As the Landlord never approved a colour, I find that the Tenant did not have consent. Residential Tenancy Branch policy guidelines stipulate that any changes not explicitly consented to by the landlord must be returned to the original condition. I concur with this policy guideline and I find that the Tenant failed to comply with section 37(2) of the *Residential Tenancy Act (Act*) when the Tenant failed to restore the fence to its original condition at the end of the tenancy.

Residential Tenancy Branch policy guidelines further stipulate that if the tenant does not return the rental unit and/or residential property to its original condition before vacating, the landlord may return the rental unit and/or residential property to its original condition and claim the costs against the tenant. In these circumstances, the fence has not yet been restored to its original condition.
Claims for compensation related to damage to a rental unit are meant to compensate the injured party for their actual loss. In the case of fixtures in a rental unit, a claim for damage and loss is based on the depreciated value of the fixture and not based on the replacement cost. This is to reflect the useful life of fixtures, such as a fence, which are depreciating all the time through normal wear and tear. I do not, therefore, find that the Landlord is entitled to the entire cost of the estimate, as this estimate would leave the fence in much better condition than it was at the start of the tenancy. This decision is based on the photographs of the unpainted portions of the fencing, which show that the fence was in need of refinishing. It was also based on the tentative consent provided by the Landlord, which causes me to believe that she thought the fence was in need of refinishing.

I find that the estimate from the painting company is of limited value in determining how much it will cost to restore the fence to its original condition, as it does not break down the costs of removing the stain, scraping and pressure washing, sanding, and staining with two coats of stain. This estimate does not establish how much it would cost to remove the stain with a chemical stripper and to scrape, which is the extent of the expenses I would likely award in these circumstances. I would not award compensation for pressure washing or sanding the fence, as I find that type of preparation would likely have been necessary prior to refinishing the fence even if the Tenant had not stained. I would not award compensation for staining the fence, as the evidence shows the fence was due for refinishing in the near future. As I do not know the costs of these individual tasks it is difficult to rely on this estimate in determining costs, although it is not unreasonable to assume that stripping and scraping the fence would account for 1/3 of the estimate, which is $1,253.00.

Residential Tenancy Branch Policy Guidelines further stipulate that where the landlord has not returned the unit or property to its original condition, the landlord may claim the amount by which the value of the premises falls short of the value it would otherwise have had. I also concur with this policy guideline and in circumstances where the Landlord has not clearly established the cost of remedying the breach, I find that this is the most reasonable means of compensating the Landlord.

The difficulty with this claim, is that while one person might consider the stain to have improved the value of the residential property, another person might find it has reduced the value of the residential property. Clearly the Landlord does not believe the stain has improved the value of the property and I understand the Landlord's position on that matter, given that the fence no longer matches the adjacent fences. Although compensation for damages of this nature are inherently subjective, I find that an award of $1,250.00 is reasonable compensation for the changes that were made.

On the basis of the undisputed evidence, I find that the Landlord did not agree to compensate the Tenant for painting the fence, building a storage loft, painting a wall in the dining room, or moving personal property out of the rental unit and I cannot, therefore, conclude that these projects formed a term(s) of their tenancy agreement. I therefore dismiss the claim for compensation for the costs of these projects. In making this determination I specifically note that I have authority to enforce the *Act* and the terms of a tenancy agreement and I do not have authority to enforce an employment contract or agreement that is not directly related to the tenancy agreement.

On the basis of the undisputed evidence, I find that the Tenant was required to maintain the yard as a term of this tenancy agreement. Residential Tenancy Branch policy guidelines suggest that a tenant in a single-family dwelling is responsible for routine yard maintenance, which includes cutting the grass and a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. I concur with this policy. As the Landlord did not ask the Tenant to aerate the lawn, to fertilize the lawn, or to add bark mulch, I find that the Tenant was not obligated to perform these tasks. As they were not required as part of the tenancy agreement, I dismiss the Tenant's claims for compensation for these tasks.

On the basis of the undisputed evidence, I find that the Tenant did not object to the Landlord's requests to assist with repairing the washing machine and that the Landlord did not agree to compensate the Tenant for that assistance. I therefore dismiss the claim for compensation for assisting with this repair. Although it is the Landlord's obligation to maintain the washing machine, the Tenant had every right to simply decline the Landlord's request for assistance.

On the basis of the undisputed evidence, I find that the Landlord had authority to store personal property in one room of the rental unit for an indeterminate period of time and that the Tenant is not entitled to compensation for this storage.

On the basis of the undisputed evidence, I find that the Landlord stored additional personal property in the rental unit and that the Landlord had the verbal consent of the Tenant to store the property there until at least February of 2012. As the property was stored with the consent of the Tenant up to that point, I find that the Tenant is not entitled to compensation for additional property being stored for any period prior to February of 2012.

I favour the testimony of the female Tenant, who stated that the Landlord was asked to remove the additional property at the beginning of February of 2012, over the testimony of the Landlord, who stated that the Tenant did not ask that the additional property be removed. In reaching this conclusion, I was influenced by the undisputed evidence that the property was moved on March 17, 2012. While it is possible that the timing of the move was merely coincidental, I find it more probable that the property was moved on March of 2012 because the Tenant asked it to be moved.

I find that the Tenant is entitled to compensation for not being able to use the space used for storing the Landlord's additional personal property for a period of one month. As the additional storage used approximately 120 square feet of space and the entire rental unit was approximately 2900 square feet, I find that the monthly rent should be reduced by approximately 4.14% (120/2900) for the period of one month, which is $93.15. For the sake of simplicity, I award total compensation of $100.00 for this inconvenience.

Section 7(2) of the *Act* stipulates that a tenant who is claiming compensation for a loss must take reasonable steps to minimize that loss. I find that it is likely the Tenant would have been able to recover their barbecue cover if they had simply informed the Landlord that their barbecue cover was stored in the basement and that they had taken a cover belonging to the Tenant. As the Tenant did not take reasonable steps to recover their barbecue cover and they have since discarded the cover belonging to the Landlord, I dismiss the Tenant's claim for the barbecue cover.

Section 51(1) of the *Act* stipulates that a tenant who receives a notice to end a tenancy under section 49 of the *Act* is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the Tenant did not receive a notice to end a tenancy under section 49 of the *Act,* I find that the Tenant is not entitled to receive the equivalent of one month's rent.

In determining this matter, I was influenced by the email sent to the Landlord on May 14, 2013. It is very clear from this email that the Tenant understood that they did not have to vacate the rental unit on the basis of the fixed term of the tenancy agreement and that the Landlord would have to serve them with a Two Month Notice to End Tenancy if the Landlord wished to move back into the rental unit. On the basis of this understanding, I find that the Tenant did not vacate this rental unit because they believed they were obligated to comply with the Landlord's desire to move back into the

rental unit. Rather, I find that this tenancy ended because the Tenant opted to take advantage of the offer to end the tenancy prior to the end of the fixed term.

I find that the Applications for Dispute Resolution filed by each party have some merit and that both parties are obligated to pay for their own costs for filing an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of $1,250.00. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain the security deposit of $1,150.00 in partial satisfaction of this claim, leaving a debt of $100.00.

The Tenant has established a monetary claim, in the amount of $100.00**,** as compensation for being without a small part of the rental unit for one month.

I find that the after offsetting the two monetary claims, neither party is entitled to a monetary Order.

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 02, 2013

Residential Tenancy Branch