



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MND, MNSD, & FF

Introduction:

This hearing dealt with the landlord's application for a monetary claim due to unpaid utilities and damage to the yard of the rental unit. The landlord also seeks an Order of Possession based on a two month Notice to End Tenancy for the landlord's use of the rental unit. This request is no longer required as the tenants vacated the rental unit effective November 30, 2008. Both parties appeared and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined:

Has the landlord established a monetary claim due to non-payment of the utilities and damage to the yard of the rental unit?

Background and Evidence:

The parties confirmed that the term of the tenancy is from May 1, 2008 to April 30, 2009. Rent in the amount of \$1,200.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00.

The landlord filed this application for damages prior to the tenancy ending. As a result the damages claimed against the tenants for damage to the yard was premature as the tenants had the opportunity to correct any damage before the tenancy ended. However, at the time of this hearing the matter remained an issue with the tenants disputing any damages to the yard of the rental unit.

The landlord provided some photographs of the alleged damage which depicts dried out patches in the grass around the yard and some broken branches from a small fruit tree. The landlord has estimated the damage to be in the excess of \$600.00. However, the landlord did not provide any evidence to support her position that there was over \$600.00 in damage to the yard.

The tenants' argued that the yard was reasonable taken care of but acknowledge that some areas were dried out. They submitted that a wind storm damaged the fruit tree and they merely pruned off the damaged branches. They also submitted that the majority of the damage to the front lawn was due to city work on the sewer system.

There is no issue that the utilities are owed to the landlord. However, there is a dispute as to the sum owed to the landlord. The landlord submitted that the tenants owe utilities for the period of May 1 to June 30, 2008 for the sum of \$142.14 and an additional \$498.55 for the period of June 1 to December 31, 2008. The tenants submit that the only amount due is the sum recorded on the utility bill for \$498.55.

Analysis:

There are several difficulties with the landlord's application. As the landlord is claiming damages due to breach of contract by the tenants, the landlord has the burden of proving the damages claimed. Although I accept that the lawn does appear to have suffered some damage, perhaps from lack of water or from objects lying on the grass, the landlord has failed to establish how these areas represent damages in the amount of \$600.00.

The landlord has also failed to complete a move in or move out condition inspection report to establish the condition of the yard prior to the start of the tenancy. There are also the issues of regular weather effects on a lawn and garden. The landlord has also failed to establish that the tenants damaged the fruit tree. There is no reason why it is not a reasonable explanation that the fruit tree was damaged during a storm. I am also not satisfied that the tree will not recover to its full potential.

The landlord has failed to establish her claim for damages to the lawn and fruit tree. I am not satisfied that the lawn and tree will not recover fully with some care. I find that the landlord is only entitled to a reasonable estimate of the actual cost of repair which would include grass seed and watering. I award the landlord the sum of \$100.00 towards repairing the yard of the rental unit.

I am also not satisfied that the tenants' owe any more utilities than the amount recorded on the bill. It is very common for the utility company to carry forward any outstanding amount and payments when issuing the new bill. I am satisfied that the tenants' are only responsible for the sum of \$498.55 as recorded on the official utility bill.

As I have accepted the landlord's application in part I also Order that the landlord may recover the \$50.00 filing fee for this application from the tenants. I find that the landlord has established a total monetary claim of \$648.55. I Order that the landlord may recover this sum from the tenants security deposit plus interest of \$605.90 in partial satisfaction of this claim.

Conclusion:

I grant the landlord's application in part and issue a monetary Order to the landlord for the sum of **\$42.65**.

Dated December 10, 2008.

Dispute Resolution Officer