



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order to recover unpaid rent, for damage to the rental property and a Monetary Order to recover the filing fee. The landlord has also applied to keep all or part of the security deposit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent to the tenant by registered mail on July 13, 2009.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- What is the extent of the damage to the unit, site or property?
- Has the landlord provided sufficient evidence that the damage is caused by actions or neglect of the tenant?
- Is the landlord entitled to keep all or part of the tenant's security deposit?
- Is the landlord entitled to recover the filing fee from the tenants?

Background and Evidence

This tenancy started on September 01, 2008. This was a fixed term tenancy until August 31, 2009. Rent for this property was \$2,500.00 per month due on the 1st of each month. The tenants paid a security deposit of \$1,250.00 on August 01, 2008. On March 25, 2009 the tenants gave the landlord written notice to end the tenancy for June 07, 2009 as per the tenancy agreement.

The landlord claims that the tenants have caused damage to cedar trees lining the driveway of the property. The landlord has replaced these at a cost of \$3,038.00 including taxes and has provided a quotation for this work. The landlord was also claiming the cost of repair to the dishwasher door but during the hearing they withdrew this section of their claim. The landlord has provided photographs of the dead trees lining the driveway. The landlord also claims that as the tenants vacated the property on May 30, 2009 and their notice period was to vacate on June 07, 2009 therefore the landlord claims the tenants owe rent for June 01 to June 07, 2009 to an amount of \$550.00.

The tenants testify that they did give the landlord more than two months notice to end the tenancy and due to getting a moving company to move them on May 30, 2009 they thought this would be the day the tenancy ended.

The tenants testify that they were not negligent with regard to the cedar trees. They have provided evidence in the form of photographs of other trees on the property and neighbours trees which have also died and suggest this was caused by acts of nature rather than their neglect. The tenant states that during the unusually cold winter last year they did have to put salt down on the driveway in order to negotiate the steep drive through the worst snow falls. They wondered if this may have contributed to the death of

the trees but this would not explain why other trees on the property away from the drive also died and why other trees in the neighbourhood died. The tenant has included information from internet sources about cedar trees and why they potentially die.

The tenants also discussed the improvements they made to the rental property and the landlords' agent confirms that they are good tenants.

Analysis

Section 26 of the Act states that a tenant must pay rent to a landlord when it is due. As the tenant ended the tenancy agreement by giving the landlord Notice to end the tenancy on June 07, 2009 the tenant is liable to pay rent up to that date. Therefore, I find in favour of this section of the landlords claim for unpaid rent to the amount of \$550.00.

I find that the landlord has not provided sufficient evidence to support his claim that the tenants are responsible for the damage to the cedar trees. The tenants' evidence clearly shows many damaged trees in and around the neighbourhood and has provided additional evidence to determine the likelihood that these were damaged by nature rather than the actions of the tenants. A landlord must provide evidence to support his claim that the trees were damaged due to the actions or neglect of the tenants in violation of the Act, regulations or tenancy agreement and in this instance this was not provided. Therefore, I dismiss this section of the landlords claim without leave to reapply.

I find the landlord is entitled to keep part of the tenant's security deposit in payment of the outstanding rent of \$550.00. The rest of the security deposit must be returned to the tenant.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

As the landlord has only been marginally successful with their claim, I find they must bare the cost of the filing fee.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. I Order the landlord to keep **\$550.00** from the tenants security deposit in payment of this monetary claim for rent owed and the balance of \$700.00 must be returned to the tenant within 15 days of receiving this decision.

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 09, 2009.

Dispute Resolution Officer