



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, some other issues and a Monetary Order to recover the filing fee.

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

- Is the tenant entitled to compensation for damage or loss under the *Act* and if so how much?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

Background and Evidence

This tenancy started on September 15, 2004. Rent for this unit is now \$1,159.37 and is due on the first of each month. The tenant paid a security deposit of \$500.00 on September 15, 2004 when she originally moved into the rental property with a different landlord. The present landlord purchased the property in June 2009.

The tenant testifies that when the landlord took over the property he asked her to move some of her belongings from the storage space she had been using for the last five years as he wanted to renovate the area. The tenant claims the landlord divided the storage area in half and she has lost the use of the space she had been using under the agreement she had with the

Residential Tenancy Branch
Ministry of Housing and Social Development

previous landlord. Her belongings no longer fit into this smaller space and storage is limited in the rental unit.

The tenant testifies that when the landlord started to make the renovations in the downstairs unit, which he occupies, the tenant then had problems with her plumbing and lost water pressure, the power was also shut off intermittently without much prior notice. This lasted for over two and a half weeks during July, 2009. The tenant claims the landlord did not deal with the water pressure issues when asked to do so by the tenant. The tenant also claims that during this time they had to endure constant contractors doing work, disturbing the tenants' peace and quiet enjoyment. The tenant seeks compensation to recover rent from July 15, 2009 onwards.

The tenant testifies that when the landlord wanted to start work on the back yard he asked her if he could relocate her garden shed. The tenant decided to put this up for sale instead and the landlord said she should keep it for storage and he would pay to relocate it within the back yard. The landlord told the tenant he would be responsible for the shed during its move. The tenant claims the shed was in good condition before its move. The tenant claims the landlord has caused damage to the shed as it was dragged across uneven ground and not relocated correctly on its former base boards. She now has trouble opening the door as it is no longer aligned and it is on a different level to its step. Some boards have been damaged and the latch is damaged. The tenant seeks \$300.00 in compensation to repair the shed.

The tenant claims she had a verbal agreement with the previous landlords to park her recreational vehicle (RV) on the property. The new landlord told her she would have to move it as he needed to do the garden renovations and she could have a parking space at the side of the house when the renovations were finished. The tenant is claiming storage costs of \$300.00 from August 22 to the present day for storing the RV elsewhere. The tenant claims the landlord told her if she wanted to bring back her RV she would have to pay \$100.00 per month for a parking slot.

The tenant testifies that the landlord also decided to renovate the front garden at the same time as the back garden and she was without the use of these common areas from July 27 to August

Residential Tenancy Branch
Ministry of Housing and Social Development

20, 2009. The tenant claims that although the yard work is now complete they do not use the areas as there was an occasion when the landlord was videotaping her children playing outside and this now makes them uncomfortable and intimidated to use the areas. The tenant also testifies that during the construction taking place in the gardens they suffered with an ant infestation which although notified of, the landlord did not take any action to correct and the tenants incurred a cost of \$14.00 to buy ant powder to deal with the problem.

The tenant has also claimed moving expenses to move to another property because living conditions are now unbearable.

The landlord confirms the tenants' evidence about agreeing to move her garden shed he testifies that he told her he would get his landscaper to look at moving it. However, the landlord testifies that they found the shed had not been set on any proper surface and the base boards used were rotten and had only been nailed together in three places. The shed has now been set on a gravel base and because of this it is at a different height to its steps. The landlord disputes that the shed has been damaged. The landlord claims the ground was level when the shed was moved as it had been prepared for turf to be laid and was not dragged across uneven ground as the tenant testifies.

The landlord testifies that he has had to renovate his unit and did take some of the tenants' storage space to make storage for both the upstairs and downstairs units. The landlord agrees that the tenants water was cut off on two occasions and he could not give her much notice as he was never sure when his plumber was coming to do the work. Each time, the water was only off for approximately 15 minutes. The plumber also looked at the water pressure issues and told the landlord there was good pressure and there was just air in the pipes due to the water cut offs. This would clear when the tenant ran the taps for a period of time. The landlord testifies that the tenants' electricity was not cut off as each unit has a separate panel and the breakers are clearly marked for each unit. He instructed his electricians' not to touch the other units' breakers.

The landlord claims that at a previous hearing the tenant claimed that she was hardly at home during this time period and now she wants to claim for a loss of peace and quiet enjoyment. The

Residential Tenancy Branch
Ministry of Housing and Social Development

landlord claims he only asked the tenants not to use the garden areas while work was going on and for a period of time after the new turf had been laid. He testifies that these are common areas and the tenant can use them. The work was done to create new parking for the tenants and a nice common garden area for them to use. He testifies that when he was video taping the tenants family it was simply to gather evidence for tenancy violations.

The landlord claims he did treat the ant infestation and put ant powder all around the property, filled all cracks with it and placed it in the stairwells and doors.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the first issue raised concerning a loss of storage space I find in favor of the tenants claim. The tenant had a verbal agreement with her previous landlords to use the whole storage space and this facility has now been reduced by this landlord. The *Residential Tenancy Act* section 14 states that a tenancy agreement must not be amended to add, remove or change a term. As the tenant had a previous agreement to use this space the new landlord can not alter this agreement without the tenants consent. Therefore, the tenant is entitled to reduce her rent by **\$35.00** per month for the restriction of a facility she has used and deems to be essential to her living accommodation for storage pursuant to section 27 of the *Act*. In addition to this as the tenant use was restricted from July 27, 2009 I find she is entitled to recover **\$5.00** for July, 2009 and **\$35.00** per month from August to November, 2009 to an amount of **\$140.00**

With regard to the second issue raised about the garden shed. I find the tenant and landlord did agree that the garden shed could be moved. Regardless of the landlords' evidence showing the baseboards as he assumed responsibility for this move he should have ensured the shed was left in its original condition. The tenants' documentation shows that the shed is now at a lower level and has sustained some damage; therefore, I find the tenant is entitled to receive some compensation to rectify this damage. The tenant has claimed \$300.00 however I find this amount excessive as she advertised the shed for this amount and was willing to sell it to the

Residential Tenancy Branch
Ministry of Housing and Social Development

landlord if she moved from the property for this amount. Therefore, I have reduced her claim for damages to **\$150.00**.

With regard to the third issue raised, the tenant has claimed compensation for the loss of her RV parking space from August 22, 2009 to the present day. However, the tenant has not provided sufficient evidence to support her claim for costs relating to paying for alternative storage elsewhere. The landlord has confirmed that the tenant can bring her RV back to the rental property and may store it on the property as originally agreed with her previous landlord at no extra cost. As the tenant did lose this space temporarily I award her compensation in the amount of **\$100.00**.

With regard to the forth issue raised, I find the landlord renovated the front and rear gardens for the tenants enjoyment as well as to enhance the property. Therefore, I find the tenant is not entitled to compensation for the temporary loss of these areas. I further find the landlord did deal with the issues concerning the water pressure and ant infestation and the tenant has not provided sufficient evidence to support her claim regarding the times the water or power was turned off. Therefore, this section of the tenants claim is dismissed without leave to reapply.

With regard to the tenants claim for loss of quiet enjoyment I find a landlord is entitled to renovate a property he owns and as such a tenant may have to experience some inconvenience while this work takes place. A landlord must do everything to minimize any disturbance to the tenants. I find the landlord did carry out a renovation of his unit and the front and rear gardens. The tenant has not substantiated her claim of a loss of quiet enjoyment due to this work. While I accept the tenant had to put up with some disturbance I do not feel this was unreasonable given the work that took place. However, I do find the tenants use of the garden was disturbed due to the landlords' actions of video taping her children. Section 28 (d) of the Act states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:



Dispute Resolution Services

Page: 6

Residential Tenancy Branch
Ministry of Housing and Social Development

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

As the landlords actions resulted in the tenant and her family not being comfortable in using the outside area due to the landlords actions (however it was construed) I find she is entitled to compensation to an amount of **\$250.00**.

The tenant has requested \$950.00 be awarded for moving expenses; however, the tenant has not moved from the property and therefore no award will be made for an expense that has not incurred. This section of the tenants claim is dismissed with leave to reapply.

As the tenant has been partially successful with her claim she is entitled to recover half her filing fee to amount of **\$25.00**. A Monetary Order has been issued for the following amount:

\$670.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$670.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the tenant to reduce her rent by **\$35.00** per month for the restriction placed on her storage facility until such a time as the facility is restored or the tenancy ends.

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: December 01, 2009.

Dispute Resolution Officer