



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes DRI, OLC, RP, MNDC, FF, O

Introduction

This matter dealt with an application by the Tenant to dispute a rent increase, for compensation for damage or loss under the Act or tenancy agreement, to recover the filing fee for this proceeding and for an order that the Landlord comply with the Act by making repairs to the rental property.

Following the first day of hearing on November 5, 2009, a decision was issued on the Tenant's application to dispute a rent increase. At the beginning of the reconvened hearing, the Tenant confirmed that all outstanding repairs have been addressed by the Landlord and as a result, there is no longer a need for a repair order.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

The Tenant claims that the Landlord has failed to maintain the rental property and in particular, the exterior of the rental property. The Tenant said he shares the front and back yards with two other rental suites in the rental property and agreed at the beginning of the tenancy that he would mow the grass. However, the Tenant argued that he did not agree to be responsible for snow removal, weeding and picking up garbage and dog droppings but has done so for the past 3 years because the Landlord would not. The Tenant also claimed that he built a gate to keep dogs out of the front yard and has had to clean the exterior windows.

The Tenant admitted that he did not ask the Landlord to take care of the weeding or to add a gate to the front fence but said that he did advise the Landlord that he needed to remove snow last winter (when there was a heavy snow fall) but he just brought the Tenant a small shovel. The Tenant also claimed that he asked the Landlord to clean the exterior of the windows but he did not believe the Landlord had ever done so.

The Landlord claimed that at the beginning of the tenancy, "allowances" were made to the rent to account for the Tenant taking care of certain maintenance matters. The

Landlord said that the Tenant was also compensated for making repairs. The Landlord claimed that it has only been in the past year that the Tenant has not wanted to assume the maintenance responsibilities any longer.

The Landlord admitted that he was responsible for snow removal but argued that snow accumulation was not an issue for the first 2 years of the tenancy. The Landlord claimed that he has cleaned the exterior windows of the rental unit twice in the past 3 years and argued that there was no evidence that they required cleaning.

Analysis

RTB Policy Guideline #1 (Responsibility for Residential Premises) states at p. 7 that “a Landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of a multi-unit residential complex.” At p. 5 of that Guideline, it also states that “the Landlord is responsible for cleaning the outside of the windows, at reasonable intervals.” RTB Policy Guideline #1 at p. 3 states that “the Tenant must obtain the consent of the Landlord prior to erecting fixtures, including a fence.”

I find that a term of the tenancy agreement was that the Tenant would be responsible for cutting the grass of the rental property, however, I also find that this agreement did not provide that the Tenant would be responsible for yard clean up including weeding and snow removal or general maintenance as the Landlord suggested. Consequently, I find that the Landlord is responsible for those matters.

The Tenant admitted, however, that he did not ask the Landlord to do the weeding or yard clean up or to put a gate on the front yard fence but voluntarily assumed those duties himself. Fairness requires that where a Tenant is seeking compensation for a Landlord’s failure to perform his responsibilities that the Tenant first puts the Landlord on notice that he will be seeking compensation if the Landlord fails to carry out his responsibilities and gives the Landlord a reasonable amount of time to address the issue. Consequently, in failing to provide the Landlord with such notice, I find that the Tenant is not entitled to compensation for weeding or yard clean up.

I find that there is insufficient evidence that a gate on the fence was necessary, but in any event, it was built without the Landlord’s consent and as a result, I find that the Tenant is not entitled to compensation for building it. I also find that there is insufficient evidence that the Landlord has not washed the exterior windows of the rental unit at reasonable intervals. In particular, I find that there is no evidence that the windows have been dirty, that the Landlord has been asked to wash the windows and that the Landlord has failed or refused to do so. Consequently, I find that the Tenant is not entitled to compensation for cleaning the windows.

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I find that there is sufficient evidence that the Landlord failed to remove snow from the rental property during the winter of 2008/2009 so that the Tenant and other occupants of the rental property could access the property safely. I find that it was not adequate for the Landlord to simply provide the Tenant with a snow shovel so he could remove the snow. Consequently, I award the Tenant \$100.00 for snow removal.

As the Tenant has been partially successful in this matter, he is entitled to recover one-half of the filing fee for this proceeding (or \$25.00). I order pursuant to s. 72 of the Act that the Tenant may deduct the amount of **\$125.00** from his next rent payment when it is due and payable.

The Landlord stated in his written submissions that he wanted an order that the Tenant no longer be responsible for "lawn activities" and that the Tenant no longer use an equipment storage area. However, the Parties have an agreement that the Tenant would mow the lawn and the Landlord cannot now unilaterally change that agreement. Furthermore, there was no application before me by the Landlord for an Order that the Tenant should no longer be entitled to use the storage area. If the Landlord wishes to address these issues, he must make a new agreement with the Tenant or file a separate application for dispute resolution.

Conclusion

The Tenant's application is allowed in part. 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 14, 2009.

Dispute Resolution Officer