

## **DECISION**

Dispute Codes      MND, SS, O, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord has applied for a monetary order and the tenant applied for a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, his agent and his advocate and the tenant.

Evidence is to be served on all parties at least 5 days prior to the hearing, excluding the day of the hearing; the day the evidence is received; and any weekends or statutory holidays, therefore the evidence must have been received for this hearing no later than May 17, 2010.

The tenant submitted two packages of evidence received by the residential tenancy branch on May 20, 2010 and by the landlord on May 21, 2010. The tenant testified that she sent the landlord's package by registered mail on May 17, 2010 and that she submitted the package for my consideration on May 17, 2010.

The packages I have received are date stamped by the branch as received on May 20, 2010. In relation to the packages received by the landlord Section 90 of the *Residential Tenancy Act (Act)* states that if a document is served by mail it is deemed received on the 5<sup>th</sup> day after it is mailed.

As such, I find that neither the landlord nor the Residential Tenancy Branch received the tenant's evidence packages in time to be considered in this matter. I note here, the tenant's disagreement with the decision to exclude her evidence.

The landlord also clarified that in their evidence the first 6 pages of photographs were taken in July 2009 as part of an inspection of the rental unit. As the matters before me relate to the condition of the rental unit pertain to the condition of the residential property at the end of the tenancy, these photographs were excluded from consideration.

### Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage and cleaning of the rental unit and to recover the filing fee from the tenant for

the cost of the Application for Dispute Resolution, pursuant to Sections 32, 37, 67, and 72 of the *Act*.

In addition it must be decided whether the tenant is entitled to a monetary order for compensation because the landlord failed to use the rental unit as described in the notice to end tenancy; for costs associated with dishwasher repair; for compensation for a fence left behind when the tenant vacated the property and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 67, and 72 of the *Act* and Section 24 of the Residential Tenancy Regulation.

### Background and Evidence

The tenancy began in August 2002 as a month to month tenancy for a monthly rent of \$575.00 due on the 1<sup>st</sup> of the month. The tenancy ended on October 31, 2009 subsequent to a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The landlord has submitted 37 photographs of the rental unit and residential property and a breakdown of the landlord's claim.

The tenant submitted into evidence the following documents:

- Page 3 of a document signed by the tenant discussing the potential for compensation in the amount of \$1,150.00; request to retrieve property and for payment for a dishwasher repair;
- A copy of a letter from the landlord dated October 7, 2009 referring to a previous Dispute Resolution application;
- A copy of an invoice from a plumbing contractor for work completed in August 2009; and
- A copy of an undated email response from the landlord's agent regarding access to the residential property.

The landlord clarified they were not claiming any costs associated with cleaning of the rental unit but rather for cleaning the yard and garage. The landlord claims a contractor was hired and charged for 100 hours at \$20 per hour and \$500 for "dump runs".

The tenant provided comment on all photographs submitted by the landlord relevant to the claim. The tenant testified that had she had more time to vacate the property she would have come back and cleaned the yard. She does agree with the condition of the yard with the exception of the bags in the garage.

The tenant testified that she contacted the landlord's agent in November 2009 to request access to the property to obtain a chain link fence that she had left behind that she had advertised on a web site as for sale. The landlord refused her access.

The landlord's agent testified that she received the request on November 20, 2010 and that she had asked the landlord who denied the tenant access as he felt the property had been abandoned and therefore the tenant had no rights to it.

In relation to the tenant's claim for repairs to the dishwasher, the landlord's agent agreed that this was sufficient documentation to compensate the tenant for the dishwasher repairs.

The landlord and his agent testified that the rental unit was removed from the property on May 8, 2010. The unit has been moved to another site where it is to be destroyed. The landlord testified that he felt it was a reasonable time to complete this activity and noted that when a Manufactured Home Park changes its use it takes up to one year to remove homes.

The landlord noted that the rental unit had to be prepared to have it removed. There was a deck and skirting that needed to be removed and the yard needed to be cleared.

The tenant testified that it was not a reasonable amount of time and that she should have been allowed to stay there longer and she would have then been able to clean the yard better before vacating.

### Analysis

Because the landlord is not pursuing any compensation for cleaning the interior of the rental unit, I advised the parties that consideration would not be given to the photographs submitted by the landlord regarding the interior of the rental unit.

As to the landlord's application, Section 37 of the *Act* requires a tenant who vacates a rental unit to leave the property reasonably clean and undamaged except for reasonable wear and tear. As the tenant does not disagree with the condition of the yard and garage, except for the garbage bags in the garage, I find the condition the property was left does not comply with Section 37.

While the landlord has not submitted any receipts for either the labour or the charges for any landfills or recycling depots, I find that, based on the photographic evidence, it took

at least 70 hours to clean this property. I also find the charge of \$20.00 per hour to be reasonable.

The landlord's failure to provide receipts leaves me with no ability to determine a value for any dump or recycling depot charges, I therefore dismiss this part of his application.

The landlord's agent agreed to the compensation of \$210.00 to the tenant for repairs to the dishwasher based on the invoice submitted by the tenant.

Section 24 of the Residential Tenancy Regulation states that a tenant who leaves personal property on residential property that she vacates after the tenancy agreement has ended has abandoned her property.

Section 25 of the Regulation states the landlord must store the property for 60 days unless the landlord believes there is a total market value of less than \$500.00. By the tenants own submission the value of the chain link fence was \$150.00. I dismiss this portion of the tenant's application.

And finally in regard to the tenant's claim for compensation because the landlord has failed to use the property for the stated purpose for ending the tenancy under Section 49 of the *Act*. Section 49 allows the landlord to end a tenancy to demolish the rental unit or to convert the rental unit to a non-residential use.

As neither party provided a copy of the 2 Month Notice to End Tenancy I cannot determine what the stated purpose was, however, because the rental unit no longer exists and has been removed from the property, I do find that the landlord has ended the tenancy in compliance with Section 49.

Section 51 of the *Act* states if steps have not been taken to accomplish the stated purpose for ending the tenancy under Section 49 within a reasonable period after the effective date of the notice the landlord must pay the tenant an amount equivalent to double the amount of rent.

While I don't disagree with the tenant's assertion that she may have been able to live in the rental unit for a month or two longer before the landlord would have to start dismantling things like the deck, electricity and services, there is nothing in the legislation that speaks to these aspects.

Based on the condition of the property and the preparation work required to remove a manufactured home from private property setting, I am satisfied that the landlord met

his obligations under Section 49 within a reasonable time. I dismiss this portion of the tenant's application.

As both parties have applied to recover their filing fees and since both parties were only partially successful in their claims, I dismiss both applications for filing fees.

### Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,180.00** comprised of \$1,400.00 compensation for cleaning less the \$210.00 compensation to the tenant for repairs to the dishwasher.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: May 26, 2010.

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Dispute Resolution Officer