



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *MNDC, MND, OPC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order to recover the costs of repair to the rental unit and the fence which resulted from the alleged vandalism by the tenant, of the above ground pool and for the cost to replace the pool.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. During the hearing the tenants advised me that they had moved out around August 01, 2010. Therefore the landlord withdrew her application for an order of possession and this hearing dealt with her application for a monetary order.

Issues to be decided

Has the landlord established a claim for costs incurred to repair the rental unit and the fence? Is the landlord entitled to the cost of replacing the above ground pool?

Background and Evidence

The landlord stated that on July 10, 2010, the above ground pool located in the back yard collapsed and let out a huge quantity of water. The force of the water destroyed a portion of the fence and flooded the basement causing damage to the flooring. The landlord's spouse was on the patio when he heard the gushing sound of water. As he came down the patio stairs, he stated that he heard a door close. The landlord stated that she rushed into the suite of the tenant and observed them peeping through the blinds and hushing each other. Based on their observations and prior adverse interactions with the tenants, the landlords concluded that the tenants had vandalised the pool with a sharp object causing it to spill 4,786 gallons of water which resulted in considerable damage to the fence, yard and basement suite.

The female tenant stated that she was in her bedroom watching TV when she heard a pop and noticed water gushing into the suite. She placed towels near the door in an attempt to stop the water from coming in. The male tenant stated that he was in the living room when the landlord barged in without notice and confronted him about vandalizing the pool. Both tenants denied having caused any damage to the pool.

The landlord is claiming \$700.00 to replace the flooring, \$650.00 to replace the pool, \$100.00 to fix the fence and \$50.00 for the filing fee for a total of \$1,500.00. The landlord did not file any evidence to support her claim.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the landlord did not see the tenant cause damage to the pool and did not provide any evidence to support her claim. The tenant denied causing damage to the pool. Therefore for lack of adequate evidence, I find that the landlord has not established her claim and accordingly I dismiss the landlord's claim for a monetary order. The landlord must bear the cost of filing her application.

Conclusion

The landlord's application is dismissed in its entirety.

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 16, 2010.

Dispute Resolution Officer