



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a monetary order for \$4732.00. The tenants are also requesting that the landlords bear the cost of the filing fee that they paid for their application for dispute resolution.

The landlord's application is a request for a monetary order for \$373.50, and a request to retain a portion of the security deposit towards the claim. The landlords also requesting that the tenants bear the cost of the filing fee that they paid for their application for dispute resolution.

Tenants application

Background and Evidence

The tenant testified that:

- The landlords have not returned their full security deposit, and they are still holding \$373.50.
- They did not give the landlord any permission to keep any of their security deposit.
- The time limit in which to file a claim is now past and therefore they want an order for return of double the amount that was withheld.
- The landlords also gave them a two month Notice to End Tenancy claiming that a family member was moving into the rental unit.
- No family member moved into the rental unit and in fact the unit was renovated and put up for sale.
- They are therefore requesting an order for the equivalent of double the monthly rent, as they believe that the Notice to End Tenancy was not given in good faith.

The landlord testified that:

- They deducted \$373.50 from the security deposit because the tenants did not leave the garden in proper condition and therefore they had to pay a gardener.
- They are not experienced landlords and were not aware of the time limits or the requirement to apply for dispute resolution.
- They did give a Notice to End Tenancy for family use, and in fact the rental property is being used by family members, and although they did list the house for sale it was stipulated that the closing date could be no earlier than November 1, 2010, as they were aware that they had to use the house for family use for at least six months.
- The house is being used by the male landlord's parents as a home base when they come to the mainland to deal with medical issues.
- The male landlord's birth father was also originally going to use the house and did stay in the house for one month, but later when his financial situation improved he decided he no longer needed the use of the house.

Analysis

The landlords did not return the tenants full security deposit and did not apply for dispute resolution to keep any or all of tenant's security deposit within the time limits set out in the Residential Tenancy Act.

The Residential Tenancy Act states that, if the landlord does not either return the security deposit or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

This tenancy ended on April 30, 2010 and the landlord had a forwarding address in writing by April 30, 2010 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore, the landlord must pay double the amount of the portion of the security deposit that was not returned, to the tenants.

The landlord failed to return \$373.50, and therefore they must pay \$747.00 to the tenants.

I will not however allow the claim for the equivalent of double the monthly rent, as it is my finding that the landlords have shown that the dispute property is being used by family members.

Even if the dispute property is not being used full time by family members, it is my finding that the notice was given in good faith and I do not find that there was an ulterior motive for giving the Notice to End Tenancy.

Landlords application

Background and Evidence

The landlords testified that:

- One of the requirements of the tenancy agreement was that the tenants were to maintain the gardens at the rental property, and they failed to do so.
- As can be seen in the photos they have supplied, the gardens were left in poor condition and had many weeds and dead plants in the garden beds.
- As a result they had to have a gardener come in to put the garden back in proper condition at a cost of \$373.50.
- They are therefore requesting an order that the tenants be held liable for that \$373.50 cost plus the filing fee of \$50.00 for a total claim of \$423.50.

The tenants testified that:

- While living at the rental property they did maintain the gardens and kept them in good condition.
- They did not strip out the garden beds when they vacated, because in the month of April there is often hail or even snow, and to strip out the gardens at that time would have left the remaining plants vulnerable to possible damage.
- They therefore do not believe that they should be held liable for the costs of cleaning out the garden.

Analysis

It is my decision that the tenants are liable for the costs of cleaning out the gardens at the rental property.



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The residential tenancy agreement is very clear on the matter of the garden and it was the tenant's responsibility to ensure that the gardens were kept in good condition, well maintained and weeded.

The landlords have shown that this garden was in need of a substantial weeding and removal of dead plants and therefore it was not unreasonable for the landlords to bring in a gardener to have this work done.

Conclusion

I have allowed \$747.00 of the tenants claim, and \$373.50 of the landlords claim.

I have therefore set off the \$373.50 against the \$747.00, and have issued an order for the landlords to pay \$373.50 to the tenants.

I also allow both the landlords and the tenants filing fees and therefore they are set off against each other and no further order is issued.

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: October 13, 2010.

Dispute Resolution Officer