

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

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

The original application was a request for an order possession based on a Notice to End Tenancy for non-payment rent, and a request for a monetary order for \$4531.00; however at the hearing the landlord withdrew the claim for an order possession, as he already has possession of the rental unit and reduce the monetary claim.

Background and Evidence

The applicant testified that:

- The tenant failed to pay the September 2010 rent and as a result was given a 10 day Notice to End Tenancy.
- The tenant vacated on September 15, 2010 however he lost the full rental revenue for September 2010 in the amount of \$2000.00.

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- The rental unit was re-rented for October 1, 2010 and he lost no income for the month of October 2010, however he would still like an order for \$1000.00 rent for the month of October 2010 because the tenants contract was breached.
- The tenant also left the hot tub in the rental property in need of cleaning and the filter needed replacing.
- The tenant also left the swimming pool at the rental property in need of cleaning, draining, disinfecting and it too needed the filter replaced.

The applicant is therefore now requesting a reduced amount as follows:

September 2010 rent	\$2000.00
Hot tub cleaning	\$160.00
Hot the filter	\$50.00
Swimming Pool draining and cleaning	\$320.00
Swimming pool filter	\$11.00
Filing fee	\$50.00
Total	\$3591.00

The respondent testified that:

- She refused to pay the September 2010 rent because the electrical company put a disconnection notice on the door and she found out that the landlord had not been paying the electricity.
- The power never did get cut off, however she felt that the landlord had breached the tenancy agreement as the electricity was to be included and therefore she decided to move and not pay the rent.
- The landlord subsequently gave her a Notice to End Tenancy and she complied with that notice vacating on September 16, 2010.
- She also left the hot tub at the rental property clean and in good condition.

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- She also had maintained the pool in good condition however the landlord came without notice and started draining the pool and during that time allowed a lot of debris to build up in the pool.

The respondent therefore believes that the landlord's full claim should be dismissed.

Analysis

It is my decision that the tenant did not have the right to withhold the September 2010 rent.

There may have been a disconnection notice put on her door however there is no evidence to show that the electricity was ever disconnected to the rental property.

The tenant may have suspected a breach of the tenancy agreement, however there is no proof that a breach actually occurred.

Therefore since the landlord lost the full rental revenue for the month of September 2010 I have allowed that portion of the claim.

I deny the claim for October 2010 rent because the landlord re-rented the unit for the beginning of October 2010 and had no loss of income.

I also deny the claims for cleaning and filter replacement in the hot tub and pool because the landlord has not met the burden of proving that the tenant left the hot tub and pool in poor condition. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met and in this case it's basically just the landlord's word against that of the tenant.

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I allow the landlords claim for the \$50.00 filing fee as the landlord has established a substantial claim against the tenant.

Conclusion

I have allowed \$2050.00 of the claim; I therefore order that the applicant may retain the full security deposit of \$1000.00 and I have issued a monetary order for the respondent to pay a further \$1050.00 to the landlord.

The remainder of this claim is dismissed without leave to reapply.

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 19, 2010.

Dispute Resolution Officer