



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and their agent and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for compensation for loss or damage under the *Residential Tenancy Act* (Act), regulation or tenancy agreement and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 7, 37, 57, 67, and 72 of the Act.

Background and Evidence

The tenancy began in March 2005 as a month to month tenancy for a monthly rent at the end of the tenancy of \$1,325.00 plus utilities due on the 1st of each month. The tenant had paid a security deposit that has been resolved through a previous hearing.

The landlord contends the tenancy was to end on March 31, 2010 as a result of the landlord issuing a 2 Month Notice to End Tenancy for Landlord's Use of the Property. The landlord testified that at the end of March the tenants requested a few extra days to which the landlord agreed.

The landlord testified that as a result the landlord was unable to start the preliminary work required prior to demolition which ultimately resulted in the landlord not being able to start paying back any loans associated with the demolition. The agent provided no testimony or evidence quantifying any of those losses.

The tenant contends that the landlord did not even apply for demolition purposes until April 1, 2010 and was therefore not even ready to start any of the work prior to the tenant vacating the property.

The landlord testified that the tenant failed to remove a hot tub from the property and as a result the landlord had to pay to have the tub removed at a cost of \$500.00 plus \$25.00 GST.

The tenant contends that the landlord said it was ok for him to leave the hot tub and that they would have it dealt with through the demolition process. The landlord testified that he did try to give the hot tub away by listing it online to take away for free and although they had a couple of people look at it they were unable to have it removed without paying for the removal.

Analysis

In order to be successful in a claim for compensation for loss or damages during a tenancy the party making the claim must provide sufficient evidence to establish the following four points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken to mitigate any loss.

Section 57 of the *Act* defines a tenant as overholding when the tenant continues to occupy a rental unit after the tenancy has ended and allows a landlord to claim compensation for a from an overholding tenant for any period that the overholding tenant occupies the unit.

However, the party making the claim, the landlord in this case, must still show that a loss or damage exists. I am not persuaded by the landlord's assertion that the landlord suffered any loss or damage of the tenant's overholding. Even if I were to accept there was a loss or damage; the landlord has failed to establish the value of that loss. As a result, I dismiss this portion of the landlord's claim.

As the tenant confirms the hot tub was his, I accept the tenant left the hot tub behind at the end of the tenancy. The tenant contends the landlord indicated that it would be no problem and that the landlord would deal with it. The landlord testified that he does not recall such a discussion or agreement.

In the case of verbal agreements, I find that where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon,

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the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

As the parties dispute any such agreement, I am not able to determine the parties had any agreement for the landlord to absorb any costs associated with removal of the hot tub. As such, it was the tenant's responsibility to remove the hot tub at the end of the tenancy, in accordance with Section 37 of the *Act*.

I find the landlord has established that he suffered a loss; that the loss resulted from a breach in the *Act*; the landlord has established the value of that loss through the submission of a receipt for the hot tub removal; and the landlord made attempts to remove the hot tub by giving it away.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$575.00** comprised of \$525.00 for hot tub removal and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant 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: January 11, 2011.

Residential Tenancy Branch