



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Landlord applied for an Order for unpaid rent, an Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an Order to keep all or part of the security deposit and to recover the filing fee for the Application.

The Tenants applied for an Order for Return of all or part of their security deposit and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Preliminary Issue:

Upon a reading of the evidence submitted, both parties claimed for additional compensation or money owed for issues other than the issues and amount listed in their respective applications.

Upon query, the Landlord declined an opportunity for an adjournment to amend her Application and elected to proceed upon her Application.

Upon query, the male Tenant requested an opportunity to adjourn in order to amend the Tenants' Application. However, upon learning that the Tenants could not submit proof of service of the Notice of Hearing and Application and their package of evidence on the Landlord, I declined to adjourn the hearing in order to allow the Tenants an amendment. I further note, the Landlord testified that she has received neither the Tenants' Notice of Hearing nor the package of evidence.

In light of the above, the hearing proceeded upon the Applications as submitted.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Have the Tenants complied with the Act or tenancy agreement, entitling the Tenants to an Order for monetary relief?

Background and Evidence

This fixed term tenancy started on April 15, 2010, and was to expire on April 15, 2011. However the tenancy ended on November 19, 2011, when the Tenants vacated the rental unit pursuant to an Order of Possession issued by the Residential Tenancy Branch on November 10, 2010. The Order of Possession was issued based upon the Tenants' failure to pay the November 2010 rent in the amount of \$1,920.00, for which the Landlord is seeking compensation.

The Landlord is holding a security deposit in the amount of \$959.50.

Additionally the Landlord is seeking the amount of \$525.00, which she claims is the amount the Tenants received by way of a rent reduction.

In support of this claim, the Landlord stated that she negotiated a rent reduction in the amount of \$75.00 in return for the Tenants' agreement to maintain the lawn and property. The Landlord testified that the Tenants failed to maintain the lawn, property and landscaping and that the same had gone into disrepair.

Upon query, the Landlord testified that there was no provision as such in the tenancy agreement that the rent was reduced by \$75.00 per month, but that the Tenants agreed to the same in an email.

The male Tenant acknowledged not paying the November 2010, rent. However the Tenant denied leaving the lawn in disrepair and that the lawn was well maintained.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The parties have each submitted a voluminous amount of evidence. As to the Landlord's evidence, I find that most of the evidence was unrelated to the present claim and I have considered and addressed only the relevant evidence.

As to the Tenants' evidence, I have not considered the same as it was not timely submitted in accordance with the Residential Tenancy Branch Rules of Procedure.

Section 26 of the Residential Tenancy Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find the Tenants did not have the right to withhold rent and did not pay rent for the month of November 2010 and therefore, the Landlord has established a monetary claim for \$1,920.00 for unpaid rent for that month.

I find that the Landlord has submitted insufficient evidence that the rent was reduced by \$75.00 per month in exchange for lawn maintenance services. I find that the email exchange between the parties did not amount to a contract which would supersede the tenancy agreement and that the tenancy was clear in the monthly rent. Therefore I find the Landlord is not entitled to the amount of \$525.00 for a rent reduction.

I find the Landlord has established a monetary claim in the amount of **\$1,970.00**, comprised of the unpaid rent of \$1,920.00 for November 2010 and the filing fee of \$50.00 paid by the Landlord for this application.

I **order** that the Landlord retain the deposit of **\$959.50** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,010.50**.

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

I find that the Tenants' Application for the return of all or part pet damage deposit or security deposit and the filing fee is dismissed.

The parties are at liberty to reapply for any monetary issues not directly related to these applications, as referenced above.

Conclusion

The Landlord is granted a monetary order in the amount of **\$1,010.50**.

The Tenants' Application for Dispute Resolution is dismissed.

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: March 11, 2011.

Residential Tenancy Branch