



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF, O

Introduction

This matter dealt with an application by the tenants to obtain a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, other issues and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent by registered mail to the landlord on November 25, 2010. The landlord was deemed to be served the hearing documents on November 30, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree this month to month tenancy started on October 01, 2007. The tenants pay a monthly pad rent of \$298.00 which is due on the 1st of each month. The male tenant originally worked for the landlord as manager to the site but this employment has ended.

The male tenant testifies that they have lost their quiet enjoyment of their pad because the landlord has not resolved issues with other tenants keeping dogs on site and allowing dogs to roam the park unattended or unleashed. The tenant testifies that according to the park rules only one small dog or cat is allowed for each tenant but some tenants have more than one dog and some breeds are larger. The tenant also testifies that there is a trail down the side of the park which is not fenced off from the park and other dog owners allow their dogs to roam onto the park unleashed.

The tenant states they have had dogs defecate in their yard, which they keep to a high standard according to park rules. The tenant states the city pound will not now come on to the park as it is private property to remove any unleashed or stray dogs. The tenant states they have told the landlord many times about these issues verbally but have not yet put it in writing to him.

The landlord testifies that he is aware of the problem with dogs and cats in the park and these are an ongoing problem they are trying to deal with. He states the park rules are enforced by the new manager and they make every attempt to ensure people abide by the rules. The landlord testifies that his current manager is aware of the park rules concerning dogs and all new pets must first be approved by the manager.

The landlord testifies that the trail has been in place for approximately 20 years and other members of the public use this trail and can enter the park from it. He states it would be difficult and expensive to fence this trail off from the park but states he will erect private property signs and no trespassing signs along the trail to warn people it is private property. The landlord testifies he has not received any complaints in writing from these tenants and has received no complaints from other tenants concerning the dog issue. He states some larger dogs have been grandfathered as they only took over the park two and a half years ago. The landlord testifies that if a tenant was known to allow their dog to roam free they would be given a breach letter and this would be followed through the correct channels. At this time they have not had to do this as they have received no complaints. The landlord states the tenants have been asked not to telephone him with complaints but to put them in writing to the park manager.

The tenant testifies that he has been accosted by members of the public who are not tenants but who walk through the park from the trail. He claims they have had incidents where their flowers have been pulled up, fences have been damaged on their site and a lawn ornament has been stolen. The tenants states all these problems have made him and his wife ill from stress and has affected their quiet enjoyment of their home.

The landlord calls his witness who is the current park manager. The landlord asks the witness if he is aware of the park rules and regulations for pets; are there any problems that are not being dealt with; have there been complaints from other tenants concerning the trail; and has he ever had to enforce the park rules? The witness testifies that he is aware of the park rules and regulations, there are no problems at present and the only complaint received verbally about the trial was from these tenants. The witness states he is very happy with the way the park is.

The tenant cross examines this witness and asks again about any complaints about dogs and what is the current situation with the dog pound? The witness replies that he dealt with a complaint last summer about a dog running loose in the park but he went out looking for the dog but was unable to find it. The landlords' second witness states the city pound told her they had permission to come into the park to deal with any dogs that are running loose if tenants call them to report it.

The tenant states that the pound is not always open and if he was to catch a dog he would have to hold onto it until he got hold of someone at the pound.

The landlord states they will put the dog wardens' cell phone number in the news letter for tenants and the dog warden has told the park managers that tenants may call him directly if they see an unleashed dog in the park and he will come out and deal with it even if the dog pund is not open.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses for the landlord. With regard to the tenants claim for a loss of quiet enjoyment; I find the tenants have complained to the landlord or his manager about dogs

unleashed in the park however they have not put their complaints in writing to the landlord to notify him of the incidents and have provided no evidence to show that these dogs are dogs belonging to other tenants in the park or are dogs roaming in from outside.

I find the landlord is aware of the problem and has steps in place to deal with issues once they have been raised by tenants. The landlord has rules and regulations in place and his manager has testified that he is aware of these and what steps he must take to enforce them.

The tenants have provided no evidence to support their claim that their health has suffered because of these dogs and have provided no evidence to show what damage has been caused to their property or in their yard.

With regard to the issue with the trail; this is an area which has been used for a period of 20 years at least by the public. I agree that having this open trail could pose problems for tenants residing in the park however it would be unrealistic for the tenants to expect the landlord to fence this area particularly as it has been unfenced since the start of their tenancy. I am satisfied at this time that the landlord will take positive action to post private property notices to attempt to deter people from coming onto the park with their dogs and I am satisfied that the landlord will continue to address problems with dogs and cats within the park to prevent dogs roaming unleashed and to prevent new tenants getting dogs which are larger than dogs permitted on the park in accordance with the park rules and regulations.

I would caution the landlord at this time to ensure any pet violations are dealt with in accordance to the park rules and are removed from the park if their owners breach the park rules concerning pets.

At this time it is my decision that the tenants have provided no evidence to show the landlord inactions have caused them to loss the quiet enjoyment of their site and have not mitigated their loss by contacting either the dog pound for stray dogs or the police if any vandalism occurs to their property. As such their application for \$7,750.00 is denied.

As the tenants have been unsuccessful with their claim they must bear the cost of filing their own application.

Conclusion

The tenant's application for a Monetary Order for money owed or compensation for damage or loss is dismissed with 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: March 15, 2011.

Residential Tenancy Branch