



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant seeking a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement and to recover the filing fee.

The Tenant and Landlord's Agent appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for loss or damage under Section 67 of the Act and to recover the filing fee?

Background and Evidence

I heard testimony that this six year tenancy ended on December 31, 2010, when the Tenant vacated the rental unit.

The Tenant has claimed the amount of \$500.00, which includes damage to two trees, two rose bushes, flower pots, hanging baskets, flower bed, BBQ chain and lock, soil replacement, totalling \$342.00, 3 missing flower pots for \$45.00, time to locate, recover and move personal belongings for \$30.00, and \$83.00 for pain and suffering in dealing with the Landlord.

The Tenant submitted relevant evidence including a written summary of the timeline of events, the Landlord's news bulletin addressed to tenants, copies of pictures of alleged damages regarding the Tenant's claim, a memo to the Landlord, dated November 3, 2010, and another letter to the Landlord, dated November 22, 2010.

In support of her application, the Tenant submitted that the Landlord called a tenants' meeting, at which the tenants were advised of the impending renovations to the apartment building and that all items were to be removed from the balconies, and in the Tenant's case, her patio due to being on the ground floor. The renovations included removing all existing balconies above ground floor and to repair water damage.

The Tenant stated that she followed the Landlord's instructions and moved her possessions to the far side of her patio, but came home after work on the first day of renovations to find that most of her personal belongings were removed from the patio and placed in the public area, causing them to be damaged.

The Tenant further submits that the renovations caused further damage to her garden, including fruit trees and bushes, soil and flower pots. The Tenant submitted that she had to clean the premises on a daily basis during the 12 week renovation schedule and that she had had to move her personal possessions back and forth during the 12 weeks.

The Tenant stated that a Landlord's agent told her that they had not known what to expect out of this renovation project as that was the first time such a large project had been undertaken.

The Tenant further submitted that the aggravation of the renovation project and the damage she received caused her to end the tenancy early.

The Landlord's relevant evidence included a statement from the restoration company handling the renovations, indicating that the Tenant was offered compensation for the damage during the construction by way of a gift card from a home renovation store, which was rejected by the Tenant, and a letter from a fellow tenant.

In response, the Landlord's Agent reaffirmed that the Tenant had been offered compensation; however the Agent testified that some of the items claimed by the Tenant was the Landlord's property.

In response, the Tenant stated that the compensation wasn't offered until after the application was filed and that the gift card did not adequately compensate her as she would like a choice of shops at which to replace her property.

Analysis

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

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Awards for compensation are provided under sections 7 and 67 of the Act. In order to be successful in obtaining an award for damage or compensation such as property damage or loss, it is not enough to allege a violation of the Act, regulations or tenancy agreement by the other party. Rather, the Applicant/Tenant **must** establish all of the following: [my emphasis added]

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation of the other party has caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I find that the Tenant has established that the Landlord, committed damage to the Tenant's personal property through the photographic evidence, but has not proven a specific amount of damages with receipts, invoices or estimates. Therefore I find that the Tenant has not met the third part of the burden of proving damages.

Residential Tenancy Policy Guideline 16 suggests that a dispute resolution officer may, however, award "nominal damages," which are a minimal award. These damages may be awarded where there has been no significant loss **or** no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right. I have considered nominal damages in relation to some of the compensation claimed by the Tenant and I find the Tenant is entitled to an award of nominal damages in the amount of **\$150.00** for the damaged or missing items.

In addressing the Tenant's claim for her personal time, I find the *Act* does not provide for compensation for this claimed loss and I **dismiss** her claim in the amount of \$30.00.

As to the Tenant's claim for pain and suffering, Residential Tenancy Policy Guideline 16 considers this a non pecuniary claim related to aggravated damages. To be entitled to a claim for aggravated damages, the Tenant had to establish that the injury was caused

by the wrongdoer's willful or reckless indifferent behaviour and has to be specifically sought. I find the Tenant has submitted insufficient evidence of the Landlord's willful or reckless behaviour and I **dismiss** her claim for \$83.00.

The Tenant was partially successful in her application and I award a partial filing fee of \$25.00.

I find the Tenant has established a **monetary claim** in the amount of **\$175.00**, comprised of \$150.00 for nominal damages and \$25.00 for a partial filing fee.

I have provided the Tenant with a monetary order in these terms. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant is granted a monetary order for \$175.00.

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: April 12, 2011.

Residential Tenancy Branch