



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing was convened in response to the tenant's application seeking to cancel a Notice to End Tenancy given for Cause and to seek a monetary Order for compensation for damage or loss.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to the Orders sought?

Background and Evidence

The parties entered into a tenancy agreement on April 18, 2011. Rent was fixed at \$1,800.00 a month and the tenant paid a security deposit of \$900.00. On July 29, 2011 the landlord issued a 1 month Notice to End Tenancy for Cause. In that Notice the landlord claimed that the tenants were in "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so", the tenant initially disputed this Notice but testified at the hearing that he is in the process of vacating and he no longer wishes to dispute the Notice. T

The tenant testified that he is, however, seeking compensation for loss of use of the rental property for which he paid rent. With respect to this issue, the written Tenancy Agreement signed by the parties was submitted into evidence. The Agreement includes a clause as follows:

Tenants are reminded of strictly no access to the filled swimming pool under the covered area of the backyard for any activity.

The tenant testified that he agreed to this term understanding that he would not use the subject area. The photographs show a courtyard area showing the outline of a pool

which has been filled in with dirt and upon which weeds are now growing. The “pool” area is surrounded by a walkway.

The tenant agrees that he agreed not to use the filled in pool area as set out in the Tenancy Agreement, however he believed he had use of the remainder of the property and the back lane. However, the landlord installed locks on the back lane gate and the tenant was unable to gain access to the rental unit property through those gates from the lane. For loss of use of the laneway and gated exit/entry the tenant is seeking 25% of all the rent he has paid over the start of the tenants which totals \$2,250.00.

The landlord argued that the gates were locked in accordance with the Tenancy Agreement. The landlord says there were other means by which the tenant could come and go from the property.

The tenant says he had access to the pool by other means but believed he was agreeing not to use the pool area and he did not intend to give up access to and from the laneway via the back gate.

Analysis

Having reviewed the tenancy agreement and hearing the arguments of the landlord and tenant I find that it is clear from the tenancy agreement that the tenants agreed they were to have “...no access to the filled swimming pool under the covered area of the backyard”. However, the tenant did have access to the pool from other entry routes such as through the home itself. The only method of access that was denied to him was through the back lane gate because the landlord had installed locks on the gate. Given that the tenant did have access to the pool area from other routes I find it is reasonable that he believed he would have access to the pool area from all routes, including the back gate, although he would not use the actual pool area.

However, with respect to the amount of compensation claimed, I find that the tenant has failed to prove that he lost the use of 25% of the rental property based on the loss of the use of one means of accessing the property that being the back lane gate. I will therefore allow a nominal sum for what I find to be a nominal loss. From the period May 1, 2011 to September 30, 2011 the tenant will have paid \$10,800.00 in rent and I will allow \$50.00 per month for the loss of the back gate – 6 months x \$50.00 = \$300.00 in compensation for the loss.

Conclusion

The tenant is provided with an Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: September 09, 2011.

Residential Tenancy Branch