



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order to retain the security deposit for cleaning and garbage removal. The tenant applied for the return of the security deposit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order to recover the cost of cleaning, and garbage disposal? Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenants were the owners of the rental property prior to on March 01, 2010. Effective this date, the purchaser of the property entered into a tenancy agreement with the tenants. Neither party filed a copy of this agreement. The rent was set at \$1,800.00 which increased to \$1,950.00 on March 01, 2011. Prior to the start of the tenancy, the tenant paid a security deposit of \$900.00. The tenancy ended on May 31, 2011.

On June 02, both parties carried out an inspection. A report was not filled out. Both parties offered different versions of the inspection. The landlord stated that she pointed out several discrepancies to the tenant which included strewn garbage, dirt in the hot tub and pool and the overgrown lawn. The tenant stated that the landlord only pointed out the presence of a cycle, a wooden pallet and a large disposal bin and the need to clean the floor of the basement. The tenant stated that the landlord did not point out any other discrepancies and that these items were all taken care off shortly after.

The landlord filed photographs of the pool and hot tub showing dirt present inside, the overgrown lawn and the presence of garbage under a low deck.

The tenant stated that the maintenance of the pool, hot tub and lawn were not part of the agreement and therefore he was not responsible for the maintenance of these items. The landlord agreed that these items were not specifically mentioned in the agreement but she stated that she assumed that the tenant would take care of them.

The landlord has filed two receipts to support her claim. One is for a total of \$358.40 for garbage removal, cleaning of the pool and for cleaning of the gutters. The breakdown is not provided. The other is for a total of \$392.00 for mowing the grass. The landlord has applied to retain a total of \$750.40 from the security deposit.

Analysis

Cleaning of the gutters:

Section 32 of the *Residential Tenancy Act*, states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. I find that it is the landlord's responsibility to maintain the exterior of the home and therefore the tenant is not responsible for the cleaning of the gutters.

Garbage Removal:

Based on the evidence before me, I find that the tenant is responsible for the removal of garbage. Since there is no breakdown of what it cost the landlord to dispose of garbage left behind by the tenant, I find that it is appropriate to award the landlord \$100.00 towards her claim.

Cleaning of the pool:

Both parties offered contradictory testimony. The tenant stated that maintenance of the pool was not part of the tenancy agreement while the landlord stated that it was, even though it was not specifically noted in the tenancy agreement.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, I find that the landlord has not filed any evidence to support her testimony that the tenant was responsible for the maintenance of the pool. Accordingly I find that the landlord must bear this cost.

Mowing of the yard:

Section 1 of *Residential Tenancy Policy Guideline* addresses responsibilities of the landlord and the tenant with regard to maintenance of the rental unit. This policy states as follows:

Generally the tenant who lives in a single family dwelling is responsible for routine yard maintenance, which includes cutting grass and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds.

The landlord filed a photograph of the yard which shows overgrown grass and what appear to be plants close to the fence. In the absence of a written agreement, I find that the tenant was responsible for cutting the grass but not for the other maintenance of the yard. The landlord incurred an expense of \$392.00 and I find it appropriate to award the landlord approximately half of this amount. Accordingly, I find that the landlord is entitled to \$200.00 towards maintenance of the yard.

The tenant has proven a portion of his claim and is therefore entitled to the recovery of his filing fee of \$50.00.

Overall the landlord has established a claim of \$300.00 and the tenant has established a claim of \$50.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a claim of \$250.00.

I order that the landlord retain \$250.00 from the security in full satisfaction of the claim and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$650.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$650.00**.

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: September 26, 2011.

Residential Tenancy Branch