



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, PSF, FF

Introduction,

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss of use of a portion of the deck, for the cost of landscaping, lack of repairs and energy costs for appliances that are not efficient with regard to energy consumption. The tenant also applied for the recovery of the filing fee.

This hearing was conducted in person. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant was accompanied by an advocate.

The tenant filed late evidence, which did not give the landlord adequate time to respond. By mutual agreement the hearing went on and the landlord was given the opportunity to respond by sending in evidence that would support her testimony, after the hearing

Issues to be decided

Was the landlord negligent in responding to the tenant's complaints? Did the tenant suffer a loss of quiet enjoyment? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on August 15, 2011 for a fixed term ending on June 30, 2012. Rent is \$3,500.00 due on the first of each month. Prior to moving in the tenant paid a security deposit in the amount of \$1,750.00. Both parties agreed that extensive renovations were carried out prior to the start of the tenancy. A move in inspection was conducted on August 14, 2011 and no deficiencies were noted,

The tenant stated that on June 24, 2011 she entered into a tenancy agreement which included the use of a hot tub. In early August, the tenant met the landlord while shopping and was informed that the hot tub was being replaced by a koi pond. The tenant stated that the work was on going at the time she moved in and was completed in November. The landlord argued that the work was completed in September and filed evidence by way of a letter written by the installer which states that the work was finally finished on September 08, 2011.

The tenant stated that she was given to understand that the home was 3,000 square feet in size but found out later that the home was only 2,700 square feet.

A term of the agreement requires the landlord to split the cost of yard maintenance. The tenant performed maintenance on September 14 and presented the landlord with two bills. The landlord paid her share of the bills. During the hearing, the tenant stated that this maintenance should have been carried out prior to the start of tenancy and wants the landlord to cover the entire cost. The tenant filed receipts for the work done in September. The landlord argued that she had had yard work done prior to the start of tenancy and provided receipts to support her testimony.

The tenant stated that on November 01, she reported that the furnace was not functioning properly. The landlord denied this and stated that the tenant notified her on November 16, via email. Both parties filed copies of email correspondence between the parties and the notes between November 01 and November 16, make no mention of the problem.

The landlord visited the rental unit the next day on November 17, to assess the problem and check the thermostat. She informed the tenant that the fireplace was also available for use. A technician visited the property on November 22 and was unable to find a problem. The technician serviced the furnace and replaced a part as a precautionary measure. The landlord gave the tenant a sticker with the contact information for the technician and instructed the tenant to contact the technician if there was any problem with the furnace or fireplace. Both parties agreed that the tenant did not contact the technician.

On September 22, the tenant reported that the shower in the guest washroom was dripping. The plumber who had installed the shower was not available and therefore the landlord called a plumber from the Yellow pages, who came in on September 27. However, during this work the plumber caused another problem. The original plumber visited the rental unit and requested the landlord to order a part that needed to be replaced. The landlord ordered it immediately, but received it on October 30. It was installed on November 01. The tenant stated that this shower was not available for use for over one month and the three occupants of the home used the only other shower in the home.

The tenant stated that the home was not clean at the start of tenancy and is claiming compensation for her time spent cleaning the home. The landlord stated that she hired a cleaner for one day and that she spent several hours cleaning the home, prior to the start of tenancy. The landlord provided a receipt for the cleaning costs.

The tenant complained that the landlord visits often, sometimes without notice. The landlord stated that she visits once a month for an inspection as landlords are required to do so. The tenant filed evidence in the form of photographs and a video recording showing the landlord opening cabinets and drawers. The landlord argued that the tenant had complained about the cabinets and she was checking them out. During the hearing the landlord agreed to visit during the first week of each month after giving the tenant at least 24 hours notice of entry.

The tenant is claiming the following:

1.	Smaller square footage of home	\$1,400.00
3.	Yard work	\$582.40
4.	Weeding	\$150.00
5.	Malfunctioning of furnace and fireplace	\$600.00
6.	Loss of use of shower for six weeks	\$60.00
7.	Cleaning	\$99.00
8.	Energy costs due to inefficient appliances	\$251.00
	Total	\$3,682.40

Analysis

Based on the verbal testimony and documentary evidence filed by both parties I make the following findings:

1. Smaller square footage of home - \$1,400.00

The tenant visited the home a total of three times before she signed the tenancy agreement. The tenant was fully aware of the space she was renting and accepted it as is. Had the tenant done her due diligence, she would have known the square footage of the home and could have refrained from entering into the tenancy agreement. I find that the tenant is not entitled to her claim for \$1,400.00.

2. Loss of use of hot tub and deck - \$540.00

When the tenant viewed the home, the deck was intact. After signing the tenancy agreement, the landlord made changes which decreased the size of the deck. In addition the hot tub was replaced by a koi pond which was not what the tenant signed up for. The work was completed on September 08, 2011.

Even though the tenant was informed of the changes prior to moving out, I find that the tenant had committed to the move and was unable to change plans at such short notice.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

I find that the tenant was inconvenienced by the changes made by the landlord and I find it appropriate to award the tenant a minimal award. Based on the amount of the rent, I award the tenant a onetime award of \$350.00 for the loss of use of a portion of the deck.

3. Yard work - \$582.40

4. Weeding - \$150.00

A term in the agreement requires the landlord and tenant to split the cost of yard maintenance equally. The tenant is claiming a refund of her portion. The tenant stated that the work done should have been done prior to the start of the tenancy which was the landlord's responsibility. I find that the tenant is not entitled to her claim for the following reasons:

- The landlord had receipts to show that she had maintained the yard prior to the start of tenancy
- The tenant did the maintenance work one month after she moved in
- Seasonal maintenance is required at shorter intervals during summer

Accordingly, the tenant's claim for the cost of yard work and weeding is dismissed.

5. Malfunctioning of furnace and fireplace - \$300.00

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In this case, I find that the landlord fulfilled her obligations by acting on the tenant's complaint in a timely manner and making the necessary arrangements for the appliances to be attended to by a technician. The appliances were found to be in working order. Therefore, I find that the tenant is not entitled to her claim of \$300.00

6. Loss of use of shower for six weeks - \$60.00

Based on the testimony of both parties, I find that the landlord acted in a timely manner and the delay resulted from the time it took to get the part on order. While I find that the landlord fulfilled her obligations and that there was another shower in the home available for use, I also find that the tenant did suffer some inconvenience and I find it appropriate to award the tenant a minimal award in the amount of \$30.00.

7. Cleaning - \$99.00

The move in inspection report did not indicate that additional cleaning was required and therefore, the tenant's claim for \$99.00 for cleaning is dismissed.

8. Energy costs due to inefficient appliances - \$251

The tenant did not file any evidence to support her claim that the appliances used more energy than other similar appliances. Her claim is therefore dismissed.

Overall the tenant has established a claim \$380.00. Since the tenant is partially successful in her claim, I award her a portion of the filing fee in the amount of \$25.00. The tenant may make a onetime deduction of \$405.00 from a future rent.

Conclusion

By mutual agreement, the landlord will visit the unit in the first week of the month with prior notice.

The tenant may make a onetime deduction of \$405.00 from a future rent.

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: January 20, 2012.

Residential Tenancy Branch