



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPC, MND, MNDC, FF

Tenant: CNC, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing was convened by way of conference call on November 16, 2011 having been adjourned from October 7, 2011. During the hearing on October 7, 2011 it was ordered that portions of the applications be severed and adjourned to be heard at a later date because they were not related to the applications regarding a notice to end tenancy and to cancel a notice to end tenancy. The portions of the application that were heard on October 7, 2011 resulted in a Decision dated October 18, 2011. That hearing only dealt with the landlord's application for an Order of Possession for cause and the tenant's application for an order cancelling a notice to end tenancy for cause.

The hearing on November 16, 2011 dealt with the landlord's application for a monetary order for damage to the unit, site or property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application, as well as the tenant's applications for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The landlord attended the conference call hearing on November 16, 2011, gave affirmed testimony, and the parties both provided evidence in advance of the hearing. However, despite being notified by the Residential Tenancy Branch of the date and time for the November 16, 2011 hearing, the tenant did not attend. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. The tenant failed to attend to present the claim, and the landlord appeared and was ready to proceed. In the absence of the tenant, I dismiss the tenant's claim without leave to reapply. I made no findings of fact or law with respect to the merits of this matter.

All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled to a monetary order for damage to the unit, site or property?
- Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on May 1, 2011. Rent in the amount of \$1,800.00 per month is payable in advance on the 1st day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$900.00. The resulting Decision from the October 7, 2011 hearing granted an Order of Possession in favour of the landlord effective October 31, 2011. The landlord testified that the tenant did vacate the rental unit on that date.

The landlord further testified that the parties had a previous dispute which was heard by a Dispute Resolution Officer, wherein the parties had agreed that the landlord would make certain repairs to the rental unit, including cleaning up broken glass on the property and contracting an electrician to make upgrades to the electrical. The landlord also testified that when the electrician attended the rental unit the landlord and the landlord's father were at the rental unit picking up broken glass in the yard. The tenant asked for the electrician's business licence. The electrician stated that he didn't carry one and the tenant yelled at the electrician and told the electrician to learn English or go back to India. The electrician was not able to enter the rental unit to complete any repairs but gave the landlord a bill for \$400.00 for the call-out. The electrician was to fix an outlet in the kitchen, 2 light switches, and a light in a closet. A copy of the electrician's invoice was provided in advance of the hearing. The landlord also testified that the electrician will not return due to the behaviour of the tenant. The landlord claims \$400.00 for the call-out that was stopped by the tenant.

The landlord also testified that the tenant was required to do outdoor maintenance by weeding and cutting grass. The landlord provided an estimate dated September 26, 2011 in the amount of \$670.00, plus HST of \$80.40 for trimming tall grass in front and back yards for approximately 1 acre, removing weeds from plant beds, spraying the entire yard for weeds, trimming overgrown hedges and removal of grass trimmings from

the property. The landlord testified that the rental amount was originally \$1,850.00 per month but the parties had a verbal agreement to reduce the rent by \$50.00 per month in exchange for the tenant completing the yard care. The tenant did not care for the yard, and the landlord claims \$750.40 for yard care.

Analysis

In the circumstances, I have read the Decision of the Dispute Resolution Officer which states that the parties had agreed to certain repairs in the rental unit. I accept the testimony of the landlord that the tenant unreasonably barred the electrician from completing any repairs, and I find that the landlord has provided sufficient evidence of the resulting cost incurred by the landlord. Therefore, I find that the landlord has made out a claim for \$400.00 as against the tenant for the cost of the electrician's service call.

With respect to the landlord's claim for yard care, I find that the landlord has failed to establish that the tenant was or should be responsible for its cost. Firstly, the landlord testified that part of the repairs that the parties had agreed to included the landlord removing broken glass from the yard. Secondly, the landlord testified that the parties negotiated a lower amount for rent if the tenant did the yard work for a property 1 acre in size. There is no evidence before me to support that testimony. Further, any award for damages cannot put the claiming party in a better financial position than the party would be had the damage or loss not existed. In this case, I find that the yard required care prior to the commencement of this tenancy. The landlord's application for yard care costs is hereby dismissed.

Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$450.00. This order is final and binding on the parties and may be enforced.

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: November 28, 2011.

Residential Tenancy Branch