



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 an Application for Dispute Resolution by the Landlord for a monetary order for recovery of the filing fee and an order to keep all or part of the security deposit and pet damage deposit.

The Landlord provided affirmed testimony that they served each of the Tenants by registered mail with the Application for Dispute Resolution and Notice of Hearing on November 16, 2011, and provided the customer receipts/tracking slips from Canada Post as evidence.

I find that the Tenants were served the Application and Notice of Hearing in accordance with section 88 of the Residential Tenancy Act (the "Act").

The Tenants did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Does the Residential Tenancy Act (the "Act") apply to the Landlord's claim?

If so, is the Landlord entitled to a monetary order for recovery of the filing fee and an order to keep all or part of the security deposit and pet damage deposit?

Background and Evidence

The Landlord testified that they own ten acres and that the Tenants occupied a rental house and one acre that was fenced off to separate the Tenants' area from the Landlord's nine acres and the Landlord's residential home. The Landlord stated that they keep sheep on their nine acre property and that this area is not shared with the Tenants.

The Landlord did not submit a copy of the tenancy agreement into evidence. The Landlord testified that the tenancy agreement states that the tenancy commenced on May 01, 2011, for a monthly rent of \$1,300.00 due on the first of each month. The Landlord stated that the Tenants had a dog and that they paid \$650.00 for the security

deposit and \$650.00 for the pet damage deposit, as set out on the tenancy agreement. The Landlord stated that the Tenants moved out on October 31, 2011.

The Landlord testified that the Tenants' dog went outside the Tenants' rental property area, under the Landlord's fence and killed a sheep and a lamb. The Landlord is requesting to retain the Tenants' security deposit and pet damage deposit to pay for the vet bill costs they incurred to put down the sheep and the cost to replace the lamb. The Landlord stated that the Tenants moved out as the Landlord told them to remove their dog. The Landlord stated that the Tenants failed to pay the vet bill to put down the sheep and the cost to replace the lamb, and did not provide the Landlord written authority to keep their security deposit or pet damage deposit. The Landlord stated that they withheld \$339.00 from the pet damage deposit, but returned the \$650.00 security deposit and \$311.00 from the pet damage deposit when the tenancy ended. The Landlord stated that they filed their Application for dispute resolution within 15 days of receiving the Tenants forwarding address. The Landlord stated that they are claiming \$339.00 which represents the cost to euthanize one sheep, that was seriously injured by the Tenants' dog and the cost to replace a lamb that was killed by the Tenants' dog.

The Landlord was not able to identify any sections of the Act, regulation, or tenancy agreement that may apply to the incident caused by the Tenants' dog.

Section 2 of the Act states some of the limitations of the Act, as follows:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property.

Definitions

1 In this Act:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"residential property" means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 67 of the Act states the following with regards to claims for damage or loss:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Landlord's position is that they are unsure as to whether the Act applies to their claim or not, or whether they should be taking this matter to Small Claims Court.

Analysis

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

The Landlord provided insufficient evidence that the Tenants contravened the Act, regulation or tenancy agreement. The Landlord failed to provide a copy of the tenancy agreement into evidence. The Landlord's testimony was that the Tenants' dog entered the Landlord's private property by going under a fenced off area to attack the Landlord's sheep and a lamb. The Landlord provided insufficient evidence of any damage to the rental unit or other residential property. The Landlord's claim is for damages/losses in relation to a sheep and a lamb, which are animals and do not meet the definition in the Act of "residential property". The Landlord did not have the Tenants' written permission to retain a portion of the pet damage deposit or security deposit.

I find that the costs the Landlord incurred in relation to their sheep and lamb are outside the jurisdiction of the Act.

As a result I dismiss the Landlord's Application.

Conclusion

I dismiss the Landlord's Application.

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: February 20, 2012.

Residential Tenancy Branch