



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call in repose to the tenants application for the return of double the security and pet deposits; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement and to recover the filing fee from the landlords for the cost of this application.

The tenants, the landlord and the landlords agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other and witnesses on their evidence. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The hearing was adjourned to allow the landlord time to respond to the tenants' evidence and the hearing was reconvened on this date. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to recover double their security and pet deposits?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

Both parties agree that this tenancy originally started on December 18, 2008 and has been renewed at the end of each fixed term until June 30, 2010 when a month to month agreement was entered into. The tenancy ended on December 31, 2011. Rent for this unit was \$2,000.00 per month due on the first day of each month. The tenants paid a security deposit of \$1,000.00 on December 18, 2008 and a pet deposit of \$500.00 on February 12, 2009. The parties have established that a move in and a move out condition inspection report was completed with both parties.

The tenant attending testifies that they gave the landlord their forwarding address in writing by e-mail on January 04, 2012 and by regular mail on January 02, 2012 and again on the move out condition inspection report on January 05, 2012. The tenants state the landlord had 15 days to return the security and pet deposit and has failed to do so. The tenants seek to recover double the deposits to the sum of \$3,000.00.

The tenant testifies that the lock on their front door did not work from June 2010. The tenant testifies that they had informed the landlord of this problem and as the door could only be locked from the inside the tenants had to use the garage door and the back door to enter and exit the house. The landlord's agent came to look at the lock and said he would either repair it himself; he would call a lock smith in; or the tenants could repair the lock. The tenant testifies that they did not know how to take a lock out to take it to the locksmith and the landlord failed to either repair the lock or call a locksmith to come to the house. The tenants seek to recover the sum of \$100.00 per month for 18 Months they could not use the front door to the total sum of \$1,800.00..

The tenants testify that there were wild blackberry bushes and weeds growing in the elevated beds in the yard. These elevated beds went up 15 feet and the tenant found they could not keep up with the weed clearance required. The tenant states the landlord kept saying they would get someone in to do the yard work on these beds but failed to do so and the addendum to the tenancy agreement was changed by mutual consent that relieved the tenants of the responsibility for weeding beyond the grass area. The tenants seek

compensation of \$50.00 per month for 18 months to a sum of \$900.00 they had to live with this unsightly area and for the loss of part of their lawn area due to the thrones from the bushes.

The tenant testifies that there was a water leak in the den of the house in April 2009. The side area of lawn was excavated by Mr Rooter to deal with the water leak; however Mr Rooter only put back the soil and did not replace the grass area. The tenant testifies that this area became overgrown with weeds and the tenants lost the use of this lawn area of the yard for 31 months. The tenant testifies that the landlord said the area would be restored to its original condition and was aware that it was in a poor condition because the landlord or her agent carried out monthly inspections of the property. The tenants seek to recover the sum of \$50.00 per month for 31 months to the sum of \$1,550.00.

The tenant testifies that in August, 2011, a monthly inspection was done by the landlord's agent. When the landlord's agent informed the male tenant (her Husband) that the landlord would be coming to do another inspection in August her husband was a little taken back. The tenant testifies that her husband had his camera with him at the time and so he turned it on and asked the landlord's agent why the landlord was coming to do another inspection. The tenant testifies that her husband informed her that a heated argument ensued and the landlord's agent knocked the camera out of her husband's hand and it fell to the ground resulting in damage. The tenants seek to recover the sum of \$279.99 to replace the camera. No receipt has been provided in evidence for this claim.

The tenant testifies that during the landlords second inspection in August, 2011 the tenants informed the landlord that they would be on vacation. The tenant asked the landlord to schedule the inspection for a time they could be present but were told the landlord was too busy and a Notice of entry for the inspection was given to the tenants.

The tenant testifies that they went on vacation and left a window open for their cat to be able to come and go. The tenant testifies that when they returned from vacation the window had been partially closed to about two inches thus preventing the cat getting back into the house. The tenant testifies that they found their cat could not walk so they took the cat to the

vets on August 21, 2011. The vet could not find any injury to the cat but did identify a right legged lameness. The tenant testifies that as the landlord had closed the window and prevented their cat getting back into the house this possibly caused lameness to the cat; or the landlord closed the window on the cat. The tenants seek to recover the cost of the vet bill to the sum of \$546.39 and have provided a copy of the receipt in evidence.

The tenant testifies that the landlord served them with a Two Month Notice to End tenancy for landlords use of the property. The tenant states the landlord had given the reason on the notice that the rental unit will be used by the landlord or the landlords spouse or a close family member of the landlord or the landlord's spouse. The Notice was served on October 25, 2011 by mail and had an effective date of December 31, 2011.

The tenant testifies that after they moved from the house the tenant had to drive by the house each day and never saw the landlord or anyone move into the house. The property remained vacant and in March, 2012 the tenant saw a for sale sign in the front of the house. The tenant has provided a copy of the MLS Realtor listing in evidence. The tenants seek to recover \$4,000.00 in compensation from the landlord as the landlord did not use the house for the purpose stated on the Two Month Notice.

The tenant seeks an Order for the landlord to comply with the Act with regard to the security and pet deposits and the compensation for the Two Month Notice as the landlord did not use the property for its intended use.

The tenants also seek to recover their \$100.00 filing fee from the landlord.

The landlord testifies that the tenants were supposed to move from the property by 1.00 p.m. on December 31, 2011. The landlord states they arrived at the house and found the tenants were still in the process of moving and cleaning. The landlord testifies that they agreed to come back the following morning to do the move out inspection. The landlord states they were 15 mins late but when they did arrive the tenants were not there. The landlord sent an e-mail to the tenants requesting they come the following morning to complete the inspection however the tenants requested the following day. The landlord

testifies as she had to return to her own home so she asked someone else to conduct the inspection with the tenants on her behalf and a date was agreed of January 05, 2012.

The landlord testifies that after she heard back from her agent who did the inspection the landlord sent the tenants an e-mail informing the tenants that the landlord intended to keep their security and pet deposits. The landlord testifies that she could not get onto the internet to fill in an application form to keep the deposits and the landlord agrees she did not file an application to keep either of the deposits. The landlord also agrees the tenants did not give written permission for the landlord to keep either of the deposits. The landlord argues that the tenants were given three opportunities for an inspection of the property.

The landlord testifies that the tenants did inform the landlord that the front door lock was not working. The landlord states her agent confirmed this at an inspection and told the tenant that a locksmith was coming. The landlord testifies that the tenant told the agent that she was not available at that time for the locksmith and the landlords agent asked the tenant if the tenant would prefer to schedule a time with the locksmith herself she it could fit in with the tenants availability and the landlords would pay for any work completed.

The landlords agent testifies that at no time was the tenant asked to take the lock off and take it to a locksmith all the tenant had to do was call a locksmith to arrange a time that was convenient for the tenants.

The landlord testifies that at subsequent monthly inspections the tenant was asked if the lock had been repaired and the landlord was told it had not. The landlord states it did not seem to be an inconvenience to the tenants as the tenants drove their car into the garage and entered the house through the door in the garage.

The landlord testifies that in the original addendum to the tenancy agreement it stated that the tenants were responsible for weeding. The tenants did not weed the raised beds and that is why this area became overgrown. The landlord testifies that later it was agreed that the landlord would look at the maintenance of the yard and it was then decided to take this section of the yard out of the addendum. The landlord testifies that the tenants then

expected the landlords to fix everything that the tenants had neglected but the landlords could not find anyone to come and do the yard work. The landlord testifies that the weeding did not become the landlords obligation, the obligation was just removed from the tenants' agreement.

The landlord agrees there was a leak to the side of the house which resulted in My Rooter excavating the side of the yard. The landlord testifies that after the soil was put back the landlord's father (her agent) raked over this area and seeded it. The area did not become over grown with weeds due to the landlord's negligence it was because the tenants did not keep up with the yard maintenance.

The landlord's agent testifies that he went to the property in August, 2011 to do the inspection as agreed. The male tenant was outside the house with a camera on a tripod. The landlord's agent told the male tenant that the landlord would come by to see the house and the male tenant became upset and put the camera into the landlords agents face. The landlord agent testifies that he put his hands up to his face and the camera was not knocked out of the tenant's hand.

The landlord testifies that after this incident the landlord wrote to the female tenant and said the landlord's father required an apology from the male tenant. The landlord states the female tenant did respond and there was never any mention of damage to a camera.

The landlord testifies that while she was in the house in August, 2011 she was aware the tenants were on vacation and found the window to the master bedroom wide open. The landlord testifies that she did not have any information about a cat and she had concerns for the safety and security of the house. The landlord testifies that she closed the window partially to a position where it could be locked. The landlord states at no time did she see a cat and the tenants did not mention after they returned from vacation about any damaged caused to their cat.

The landlord testifies that when she rented the house she had relocated to the East of Canada to go to Law School. The landlord testifies that it was always the landlord's

intention to return to the house after Law School and that was the reason for the renewable leases. The landlord testifies that after finishing law school she was offered a job in Vancouver and subsequently gave the tenants a Two Month Notice to End Tenancy for landlord's use of the property. The landlord testifies that it was her intention to live in the house when she started her new position. The landlord has provided a copy of the job offer letter dated October 31, 2011 and her acceptance of this job offer. The landlord testifies that after she gave Notice to the tenants she received another job offer in January, 2012 from the company she had resigned from in the East and the landlord states she decided to take that offer instead and rejected the first offer. The house was later put up for sale when the landlord knew she would be staying in the East of Canada.

The landlord calls her first witness KS. The KS testifies that he was with the landlord when they went to the house in August, 2011. The window was wide open and the landlord had no idea the tenants had left a cat in the house while they went on vacation. KS testifies the landlord closed the window for security reasons and to prevent fire and vandalism.

KS testifies that regarding the front door; this door is only used if guests come to the house the rest of the time you go into your garage and enter the house via the garage door. The witness testifies that he is aware that the landlord's agent asked the tenant to organise a lock smith for when the tenants were available and the landlords would pay for it. KS testifies that he used to live in the house and the yard was in a great condition. KS testifies that it looked like the lawn and weeding were too much for the tenants to cope with and they felt sorry for this tenant because she could not cope with the yard and it became neglected. KS testifies that the area to the side of the house was dug up by Mr Rooter and reseeded by the landlord's father. The tenant only watered it occasionally and the area is only three to four feet wide.

KS testifies that the landlord gave the tenants notice to end their tenancy because of a job offer. KS testifies that he and the landlord had also given Notice on their rental unit and taken their son out of day care in the east in preparation to move back. KS states their home was starting to be packed up and KS was looking for work in Vancouver. They had

arranged to have their car transported and their belongings shipped back. All this was cancelled when the landlord received the second job offer.

The tenant declines to cross examine this witness.

The landlord calls her second witness PL. PL testifies that he was the person who conducted the move out inspection with the tenants on January 05, 2012. The witness testifies that there was a strong odour in the house which he would not have been able to live with.

The tenant declines to cross examine this witness.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. With regard to the tenants claim to recover double the security and pet deposit; I refer the parties to Section 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit and pet deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do either of these things and does not have the written consent of the tenant to keep all or part of the security deposit and pet deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit and pet deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on January 05, 2012. As a result, the landlord had until January 20, 2012 to return the tenants security and pet deposit and any accrued interest or apply for Dispute Resolution to make a claim against it. I find the landlords did not return the security and pet deposit or interest and has not filed an application for Dispute Resolution to keep the deposits. Therefore, I find that the tenants have established a claim for the return of double the security and pet deposit of **\$3,000.00** plus accrued interest on the original amount of the security deposit of **\$0.57** pursuant to section 38(6)(b) of the *Act*.

With regard to the tenants claim for compensation of \$1,800.00 for the loss of the front door lock. In this matter I am not satisfied that the tenants have mitigated their loss in this matter by contacting a locksmith to come to the house and repair the lock, as suggested by the landlord, after the tenant was not available for the scheduled visit of the locksmith made by the landlord. Consequently this section of the tenants claim is dismissed.

With regard to the tenants claim for the sum of \$900.00 in compensation for the weeding in the elevated beds; I have considered both parties arguments and find the tenant was originally responsible for the weeding in these beds for the first few years of the tenancy. The landlord argues that it was the tenants' neglect of the weeding in these beds during the time the tenant was responsible that created the overgrown areas. The tenant argues that the landlord removed this responsibility from the tenants but then failed to carry out any work on the weeds in these beds. The Residential Tenancy Policy Guidelines #3 refers to yard work and states, in part, that 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. I find the flower beds described by both parties went beyond a 'reasonable amount of weeding' and I find therefore that these elevated flower beds went beyond the scope of the tenants' responsibility. Consequently, I find the landlord did not comply with s. 32(1) of the *Act* and cannot contract out of the *Act* with regard to providing and maintaining residential property in a state of decoration and repair. The tenant is therefore entitled to some compensation for this unsightly area although I am not satisfied that the tenants' use of the yard was limited by these weeds. Consequently, I have limited the tenants claim to \$10.00 per month for 18 month to a total of **\$180.00**.

With regard to the tenants claim for \$1,550.00 for the loss of the use of the side lawn of the property for 31 months; the landlord and the landlord agent and witness contradict the tenant's testimony in this matter. Therefore, the burden of proof falls to the tenant to provide corroborating evidence to show that this area of the lawn was unusable for 31 months and not just for the time it took for the area to be excavated and reseeded. The tenant has not provided sufficient corroborating evidence to meet the burden of proof in this matter and this section of the tenants claim is therefore dismissed.

With regard to the tenants claim for \$279.99 for damage to a camera; the landlord and the landlord's agent have contradicted the tenants' evidence that the camera was broken during an argument between the tenant's husband and the landlord's agent. Again the tenant must meet the burden of proof to show that this damage occurred and was as a result of the actions of the landlord or the landlord's agent. The tenant would also have to provide verification of the actual amount required to compensate for this loss. The tenants have not provided any corroborating evidence to support this section of their claim and the tenant attending agrees she was not present during this argument and her testimony concerning this argument is therefore third hand. Consequently the tenants have not met the burden of proof in this matter and this section of the tenants claim is dismissed.

With regard to the tenants claim to recover veterinary fees of \$546.39; The tenant has provided a veterinary invoice for this amount but the tenant has the burden of proof to show that the cat was injured as a direct result of the actions or neglect of the landlord. The landlord has argued that they were not aware of the cat and did not see a cat when they visited the property in August 2011. I am not satisfied that the tenant has met the burden of proof in this matter that the landlord is responsible for an injury to the tenants' cat and consequently this section of the tenants claim is dismissed.

With regard to the tenants claim to recover the sum of \$4,000.00 from the landlord in compensation; I refer the parties to s. 51(2) of the *Act* which provides for additional compensation to a tenant if the landlord has not taken steps to accomplish the stated purpose for ending the tenancy under s. 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least six months. The landlord would then be responsible to pay the tenant an amount equivalent of double the monthly rent.

However, the *Residential Tenancy Act* s. 49(3) allows a landlord to end a tenancy if the landlord intends **in good faith** to move into the property, or allow a close family member to move into the property. The landlord has provided sufficient evidence to show that a job offer was made prior to the Notice being served on the tenants that would require the

landlord and her family to relocate from the East of Canada back to this property. The landlord has also provided a copy of the acceptance of this job offer. Consequently, I find that at the time the Two Month Notice to End Tenancy was served upon the tenants the landlord did have a good faith intent to return to live in this property. As the landlord later received another job offer causing the landlord to reject the first offer, this has no consequence on the good faith intent of the landlord at the time the Notice was served to the tenants and the tenants subsequent move from the rental property. Consequently, I find the landlord did act in good faith and this section of the tenants claim is dismissed.

The tenants have also applied for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement. As this tenancy has ended, no Orders of this Nature would be enforceable but the matters concerning enforcement of these sections of the *Act*, regulation and tenancy agreement have been addressed at the hearing.

As the tenants have been partially successful with their claim I find the tenants are entitled to recover half the \$100.00 filing fee to the sum of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

The tenants have been issued with a Monetary Order pursuant to s. 38(6)(b), and 72(1) of the *Act* for the following amount:

| | |
|--|-------------------|
| Double the security and pet deposit plus accrued interest on the original amount | \$3,000.57 |
| Compensation for unsightly yard | \$180.00 |
| Half the filing fee | \$50.00 |
| Total amount due to the tenants | \$3,230.57 |

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$3,230.57**. The Order must be

served on the respondent and is enforceable through the Provincial Court 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: June 01, 2012.

Residential Tenancy Branch