



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD, OPC, CNC

Introduction

This hearing dealt with an application by the landlord seeking an order of possession and an order to retain the security and pet deposits. The tenant has made an application seeking to have a One Month Notice to End Tenancy for Cause set aside and has also applied for “other”. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is either party entitled to any of the above under the Act, the tenancy agreement or the regulations?

Background and Evidence

The tenancy began on or about February 2006. Rent in the amount of \$950.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$475.00 and a pet deposit of \$475.00. The subject tenant occupies the top floor of a residential home.

The landlord gave the following testimony; adamantly disputes that any harassment of the tenant has occurred, the tenant has neglected her responsibilities of cutting the grass on a regular basis, has not picked up the dog feces left behind by her pet on a regular basis, has received complaints from the downstairs tenant that he is constantly stepping in dog feces when he’s barbequing and gardening in the yard, the downstairs tenant has spent “hundreds of hours and hundreds of dollars fixing up the yard”, the landlord has verbally warned the tenant as well as issued four warning letters from July 5-14, 2012, issued a One Month Notice to End Tenancy for Cause on July 30, 2012 with

an effective date of August 31, 2012, issued the Notice on the grounds that the tenant has “significantly interfered with or unreasonably disturbed another occupant or the landlord” as well on the grounds “seriously jeopardized the health and safety or lawful right of another occupant or the landlord”.

The tenant gave the following testimony; disputes the landlords claim that they are not picking up the dog feces, state that “we don’t pick it up first thing in the morning but it’s done every day”, mow the lawn as per the tenancy agreement, have the lawn mowed at their own expense of \$40.00 per cut once every three weeks which they feel is reasonable as the tenancy agreement does not stipulate any terms or conditions of the lawn maintenance, the tenants are seeking to have the Notice set aside.

Analysis

This was a very contentious hearing requiring me to caution both parties about their behaviour and demeanour during the hearing. It was self evident the relationship between these two parties has broken down as this is not the first time they have gone through the dispute resolution process regarding this tenancy.

Both parties have submitted documentary evidence and photographs as part of their application and were considered along with their testimonies in making a decision.

The downstairs tenant’s called in as the landlord’s witness and confirmed that the upkeep of the yard was lacking in their opinion and that they had encountered dog feces in the yard on multiple occasions. The witnesses also testified that they have become very frustrated with the subject tenant’s no care attitude in this matter as they have spent time and money trying to improve the yard.

The subject tenant supplied a tenancy agreement for this hearing that states she is responsible to “mow the lawn at no charge to the landlord”, as stipulated on the tenancy agreement. No other terms or conditions were prescribed. I asked the landlord as to why there were no conditions made as to frequency and her response was “I should

have put in some conditions, but now I know for next time". The tenant stated during the hearing on several occasions that she will continue having the lawn mowed every three weeks as she cannot bear the financial burden of doing it more often. The tenant also stated that she can assure the landlord that the feces will be picked up on a daily basis.

The landlord provided letters of warning to the tenant on July 5, 6, 10, and 14. The tenant stated that on each of these occasions the tenant had not done her "daily pickup" of the dog feces and that the landlord was targeting this issue for the hearing. Although this is a concerning pattern, the landlord did not give a reasonable timeframe for the tenant to "correct" the situation. In terms of the lawn care the tenant has carried out her responsibilities over the past six years and although the landlord would prefer a 14 day cycle of lawn care the 21 day cycle is not unreasonable considering the tenant is bearing the cost.

Based on all the evidence and testimony before me it is clear that the landlord and basement tenant do find that the lawn care and dog feces to be an annoyance and an inconvenience however I do not find the landlord has provided sufficient evidence to support the grounds they've relied on in the Notice to have the tenancy terminated.

For the benefit of both parties I have included a section of the Residential Tenancy Policy Guidelines to assist if further issues occur.

RESIDENTIAL TENANCY POLICY GUIDELINE

1. Landlord & Tenant – Responsibility for Residential Premises *Page 1-7* *Jan-04 January 1, 2004 PROPERTY MAINTENANCE*

- 1. The tenant must obtain the consent of the landlord prior to changing the landscaping on the residential property, including digging a garden, where no garden previously existed.*
- 2. Unless there is an agreement to the contrary, where the tenant has changed the landscaping, he or she must return the garden to its original condition when they vacate.*
- 3. 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.*

4. Generally the tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard is responsible for routine yard maintenance, which includes cutting grass, clearing snow.

5. The landlord is generally responsible for major projects, such as tree cutting, pruning and insect control.

6. The landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

GARBAGE REMOVAL AND PET WASTE

Unless there is an agreement to the contrary, the tenant is responsible for removal of garbage and pet waste during, and at the end of the tenancy.

The landlord was seeking to retain the pet and security deposits. The landlord was premature in that application and it was brought to the landlord's attention; accordingly this portion of their application is dismissed with leave to reapply if necessary.

The landlord has not been successful in their application.

The Notice is of no effect and force and is set aside.

The tenant applied to address a utilities issue that was never explained during the hearing and was withdrawn, accordingly I dismiss that portion of the tenant's application with leave to reapply if necessary.

As neither party has been completely successful in their application I decline to award either party the recovery of the filing fee.

Conclusion

The Notice is set aside. The tenancy continues.

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 05, 2012.

Residential Tenancy Branch