



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenants seeking the return of double the security deposit and monetary compensation for damage or loss suffered under the Act, the regulations or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Are the tenants entitled to any of the above under the Act, the regulations or the tenancy agreement?

Background and Evidence

The tenancy began on or about June 1, 2009 and ended on May 31, 2012. Rent in the amount of \$1263.00 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 \$600.00.

The tenant's gave the following testimony; enjoyed living at this location, came home one day in early April to find that the driveway was inaccessible, the landlords were beginning the construction of a brand new concrete slab driveway, the tenants were "blindsided" as they were not given notice, lost the service of the driveway for seven weeks, seeks compensation for loss of service of the driveway, seeks double the security deposit as the landlord did not return the security deposit within fifteen days or conduct a move in or move out condition inspection report, and the recovery of a utility bill that the landlord deducted from the security deposit without the tenant's consent.

The landlords gave the following testimony; had verbally discussed the issue of a new driveway with the tenants on numerous occasions, acknowledge that written notice was not given and apologizes for that, had a long standing excellent relationship with the tenant's and had always been able to work out any issues verbally, offered the tenant's some compensation which was refused, insists that the tenant's were not inconvenienced as there was plenty of street parking available, the construction was delayed for two weeks due to heavy rain, did not receive the tenant's forwarding address in a proper format but still returned the security deposit within fifteen days but withheld the amount for utilities as verbally agreed upon with the tenant.

Analysis

Both parties provided documentary evidence. All parties' testimonies and evidence have been considered in making a decision. Both parties were given the opportunity to be heard.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenants must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and

4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

As the tenant's are the sole applicant's in this matter I will address each of the claims and my findings as follows:

First Claim – The tenant's are seeking the return of double the security (\$600.00 x 2= \$1200.00) deposit minus the \$508.49 that they have already received for an amount of \$691.51. The landlord disputes this claim as the tenants did not provide their forwarding address in a proper format as required by the Act; however the landlord did return the amount minus the outstanding utilities as per the tenancy agreement and the verbal agreement at the move out walk thru inspection. In the tenant's own testimony they acknowledged the debt of the utilities. The landlord pointed out that the tenants did not sign or date their forwarding address on the form provided which is in contravention of the Act. I do not find that the tenant's properly provided their forwarding address; as well with their own acknowledgment of the unpaid utilities I dismiss this portion of the tenant's application.

Second Claim – The tenant's are seeking \$2211.30 (315.90 x 7 weeks) for the loss of use of the driveway. The tenant's feel as its part of their tenancy agreement to provide 1 parking spot and the loss of that spot, they are entitled to the recovery of the rent for that time period. The tenant's also feel that since the landlord provided no notice to the construction they are entitled to the full amount of compensation sought. The landlord disputes the amount sought by the tenants as they feel it is "unreasonable" since the tenant's were still able to park on the street a mere 12 feet away. The landlord does acknowledge that there was no written notice of the construction but thought that since they all had discussed this on numerous occasions it wasn't a surprise or that much of an inconvenience. Based on the above I do find that the tenant's are entitled to some compensation for the loss of access to the driveway however, not the amount sought. The amount sought by the tenants is unreasonable in these circumstances. The tenant's did not provide or present sufficient evidence of any significant impact on their

daily lives nor did they state any other issues with the tenancy. Both parties agree that the tenancy agreement reflects that the tenant is entitled to 1 parking spot. I find that the appropriate amount the tenant's are entitled to is \$200.00 total for the seven weeks.

As for the monetary order, I find that the tenants have established a claim for \$200.00. The tenants are also entitled to recovery of the \$50.00 filing fee. I grant the tenants an order under section 67 for the balance due of \$250.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are entitled to a monetary order of \$250.00.

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: October 17, 2012.

Residential Tenancy Branch