



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant attended the conference call hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing to the landlords and to the Residential Tenancy Branch. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on July 28, 2012, no one for the landlords attended. The tenant testified to serving the documents on that date and in that manner, and provided a copy of a Canada Post scanned signature of the recipient of the registered mail to substantiate that testimony, and I find that the landlords have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant testified that this month-to-month tenancy began on December 1, 2008 and expired on August 31, 2010. Rent in the amount of \$700.00 per month was payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$350.00 which was ultimately applied to rent. The tenant's application was filed on July 27, 2012.

The tenant further testified that throughout the tenancy the tenant could not mow the grass of the rental property or use the yard, it was too dangerous due to falling branches from the old trees. The tenant provided photographs to illustrate the extent of the debris which includes large branches on the ground, up against the house and on the roof of the house. One photograph shows a hole through the roof of the outside porch which the tenant testified was a result of a falling branch or tree. The tenant notified the landlords who said they would deal with it but never did. Instead, the landlords tried to get the tenant to move out of the rental unit. The tenant claims \$1.25 per day for loss of use of the yard from May 1, 2009 to July 23, 2010, or \$492.50.

The tenant also testified that a cabin on the property was rented to another tenant, which was about 20 feet behind this rental unit. The landlord moved that tenant out with his cat, but about 6 kittens were left behind. Some people took some of the kittens to their homes in the neighbourhood, but 3 were left behind. The landlord stated that the landlords would take care of them by finding homes, but again nothing was done. The tenant testified that the kittens were crying at the door of the rental unit and the tenant could not leave them unfed, and the tenant claims \$353.22, being \$.87 per day to the end of the tenancy for feeding the cats. The tenant also provided a copy of a veterinarian certificate showing that the kittens received shots, but the document is not dated and does not contain an amount for that service.

The tenant also testified that the landlords failed to fix the step that leads to the entrance of the house. The tenant claims \$.75 per day from December 30, 2008 to the end of the tenancy, and provided a photograph of 2 boards propped up on top of rocks used as retaining walls. The tenant testified that the tenant arranged the boards that way to make the entry and exit to the rental unit accessible. The tenant provided copies of emails exchanged between the parties, including an email dated November 29, 2008 wherein the tenant asks for the repairs to be made to the steps.

The tenant also testified that the tenant did not receive any compensation when served with a notice to end tenancy for landlord's use of property by the landlords. Further, the landlords never did move into the rental unit, and it remained vacant for over a year and then the rental property sold. Previous hearings have been held and the tenant provided a copy of a Decision of the director dated March 4, 2010 wherein the Dispute Resolution Officer granted the tenant's application to cancel a notice to end tenancy for unpaid rent or utilities. A copy of another Decision dated July 23, 2010 was provided which dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use of property. The Decision dismissed the tenant's application stating that the director did not find an absence of good faith in the giving of the notice to the tenant.

The Decision also dismissed the tenant's application for a monetary order with leave to reapply.

The tenant also provided a copy of a letter dated August 19, 2010 from the property manager of the rental unit which states that the tenant had not paid rent for the month of July, 2010 and did not move out at the end of July in accordance with the order of the Director, and the landlords at that time applied for a monetary order in the amount of \$1,400.00 for rent for July and August, 2012.

Analysis

I have reviewed the photographs provided by the tenant and it is clear that the property rented by the tenant was dangerously littered with branches and falling trees. I find that the landlords have not met the requirement of the *Residential Tenancy Act* to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. The daily rent in a month that has 30 days is \$23.33 and the tenant has claimed \$1.25 per day, which I find to be reasonable. I therefore find that the tenant has established a claim in the amount of \$492.50.

With respect to the tenant's claim in the amount of \$353.22, being \$.87 per day to the end of the tenancy for feeding the kittens, I am not satisfied that the landlords have breached the *Act* or the tenancy agreement. The tenant may have been able to report the issue to the SPCA, and if the landlords had asked the tenant to look after the pets, the tenant may have a claim. However, the tenant took in the kittens and still enjoys the pets today, and the tenant's claim as against the landlord must be dismissed.

With respect to the tenant's claim for \$.75 per day from December 30, 2008 to July 23, 2012 for the missing front step, I accept the undisputed testimony of the tenant that the tenant propped up the step, and I find that the landlords have failed to provide and maintain the rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. I further find that the tenant's claim of \$.75 per day, or \$428.25 is reasonable in the circumstances.

With respect to the tenant's claim that the landlords did not provide the tenant with the required compensation under the *Residential Tenancy Act* after serving the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant testified that the security deposit in the amount of \$350.00 was applied to rent. I have also reviewed the Decisions provided by the tenant and other evidentiary material, and the indication was that the tenant did not pay rent for the month of July, 2012. The tenant did not explain that during testimony, and I find that the tenant has not established that the tenant is entitled to compensation.

With respect to the tenant's claim that the landlords did not live on the property and therefore did not use it for the purpose set out in the notice to end tenancy, I find that the tenant has failed to provide any evidence to that effect. The tenant provided copies of advertisements and notices to show the rental unit, however, I have no evidence before me to base a determination on that the landlords did not use the rental unit for the landlord's use of the property. Further, the tenant has not provided me with a copy of the notice to end tenancy to establish that the tenant was or is entitled to further compensation.

In summary, I find that the tenant has established a claim in the amount of \$492.50 for the landlords' lack of attention to the falling trees and branches on the rental property and \$428.25 for the front step left unrepaired by the landlords despite requests from the tenant. The tenant's application for compensation for issuance of a 2 Month Notice to End Tenancy for Landlord's Use of Property and for the landlords' failure to use the rental property for the purpose set out in the notice to end tenancy, are both dismissed without leave to reapply. Similarly, the tenant's application for a monetary order for feeding kittens belonging to another tenant is hereby dismissed without leave to reapply.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$920.75.

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 02, 2012.

Residential Tenancy Branch