



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, O, FF, DRI, RP, MNDC

Introduction

This hearing was convened in response to applications by the tenants and the landlords.

The tenants' application is seeking orders as follows:

1. Dispute an additional rent increase;
2. For a monetary order for money owed or compensation for loss under the Act;
3. To have the landlord comply with the Act; and
4. Allow a tenant to reduce rent for repairs, services of facilities agreed upon but not provided.

The landlords' application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. For an order of possession for cause and unpaid rent; and
3. To recover the cost of filing the application from the tenant.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary Issue

The parties have mutually agreed that tenancy will end on November 30, 2012.

As a result of that agreement, the tenants' application to dispute an additional rent increase and to allow a tenant to reduce rent is dismissed and the landlords' application for an order of possession for cause and unpaid rent is dismissed.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for loss under the Act?

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on March 1, 2012. The rent at the start of tenancy was \$650.00, however, due to loss of cable the landlord reduced rent to \$630.00. Rent was payable on the first of each month. A security deposit of \$325.00 was paid by the tenants.

Tenants' application

The tenant testified that she shared the backyard with the owner and another tenant since the start of her tenancy. The tenant stated that the backyard access was very important to her as she used it daily to walk and exercise her dog and she also used the clothes line as there was no clothes dryer available. The tenant stated after the landlord moved out of the upstairs unit, a fence was erected on October 2, 2012, giving the new upstairs tenant exclusive use of the backyard. The tenant stated she now has to go else elsewhere with her dog and it is really inconvenient for her as a backyard was important to her when she moved into the unit. The tenant seeks compensation for loss of quiet enjoyment for the common area in the amount of \$500.00.

The landlord testified it is not a term of the tenancy agreement that the tenant has access to the backyard, however, does acknowledge the tenant has been allowed to use this area since the start of her tenancy.

Landlords' application

The landlords' agent testified the tenant has not paid any rent for August, September, October and November 2012. The landlords' agent stated that they do not provide tenants with receipts for cash payment.

The tenant testified that she has paid all rent, except for November 2012, and will pay November rent after today's hearing. The tenant stated the landlord's application does not detail any dispute regarding August 2012, rent. The tenant stated she paid cash directly to the landlord on September 1, 2012, when he was in the garage moving items out. The tenant stated on October 1, 2012, she was having a birthday party for her brother when the landlord came to collect rent and she paid rent is cash.

The landlords' agent when questioned by the tenant believes rent was paid for August 2012.

Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the each party has the burden of proof to prove a violation of the Act by the other party and a corresponding loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Tenants' application

The Act defines "**common area**" means any part of residential property the use of which is shared by tenants, or by a landlord and one or more tenants.

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];

(d) use of common areas for reasonable and lawful purposes, free from significant interference

In this case, the tenant shared the backyard with the landlord and one other tenant. It was only when the landlord moved out of the upstairs unit that a fence was erected and the tenant was no longer allowed access to the established common area which was used daily by the tenant to exercise her dog. I find by erecting a fence blocking access to the common area significant interfered the tenant right to quiet enjoyment of that area. Therefore, I find the landlord has breached the Act.

The amount claimed by the tenant for the loss of the backyard is unreasonable, however, the tenant was inconvenienced by the loss of the common area. Therefore, I will grant \$75.00 a nominal amount for each month the landlord has breached the Act. I grant the tenants for the month of October and November 2012, the amount of **\$150.00**.

Landlords' application

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

(2) A landlord **must provide a tenant with a receipt for rent paid in cash**

[Emphasis added]

In this case, the evidence of the landlords' agent was the tenant has not paid any rent for August, September, October and November 2012, however, later was unsure about August rent and believes it was paid by the tenant. The evidence of the landlords' agent was they do not provide rent receipts for cash payments. The evidence of the tenant was she paid rent in cash on September 1, 2012 and October 1, 2012 and remembers specific details on each of those days. In the absent of any other documents such as past rent receipts or a tenants ledger, I find the landlord has failed to prove rent was not paid for September and October 2012.

As a result, the landlords' application is dismissed. The landlords are not entitled to recover the cost of the filing fee from the tenant.

The evidence of the parties was the tenants have not paid rent for November 2012. However, there was no amendment to the landlords' application to include rent for November. The tenant is required to pay rent when due under the terms of the tenancy agreement and the landlord is to provide receipts. If the tenants fail to pay rent for November 2012, the landlord is at liberty to apply for unpaid rent for November 2012.

I find that the tenants have established a total monetary claim of **\$150.00** comprised of the above described amount. I grant the tenants an order under section 67 should the landlord fail to comply with this order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants are granted a monetary order.

The landlords' application is dismissed. The landlords are at liberty to apply for November 2012, rent should the tenants fail to pay rent.

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 07, 2012.

Residential Tenancy Branch