



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RE/MAX Commercial Solutions
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD, OPR

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for \$7000.00, a request for recovery of the \$100.00 filing fee, and a request to retain the full security deposit of \$700.00 towards the claim.

Background and Evidence

This tenancy began on June 1, 2012 with the monthly rent of \$1400.00, and a security deposit of \$700.00 was collected.

This tenancy ended on April 30, 2013.

The landlord testified that:

- The tenant failed to pay the April 2013 rent and therefore on April 5, 2013 a 10 day Notice to End Tenancy was posted on the tenant's door.
- The tenants failed to comply with the Notice to End Tenancy and therefore on April 12, 2013 they applied for an Order of Possession and a Monetary Order.

- The tenants subsequently vacated the rental unit on April 30, 2013 and therefore they no longer require an Order of Possession.
- The tenants however never paid the April 2013 rent, and therefore they are requesting an order for that outstanding \$1400.00.
- The tenants also damaged the brickwork on the front of the house and as a result it had to be repaired at a cost of \$662.55.
- The tenants also removed the old hot tub that was at the rental unit and had agreed that they would replace it, and then the landlord would pay depreciated price for the new hot tub when the tenant vacated. The tenants never replaced the hot tub.

They are therefore requesting a Monetary Order as follows:

April 2013 rent outstanding	\$1400.00
Repair to brickwork	\$662.55
Replacement cost of hot tub	\$3500.00 - \$5000.00 (estimate)
Filing fee	\$100.00
Total asking for	\$7000.00

The tenant testified that:

- They did not pay the April 2013 rent, however they sent the landlord's a letter stating that the landlord held their security deposit of \$700.00, that they had purchased paint in materials totaling \$618.54, and that they had done painting labour totaling \$720.00, for a total of \$2238.54. They therefore requested that the landlord take the rent out of this amount.
- They did damage the brickwork however they arranged to have a bricklayer repair it at a cost of \$662.55, and therefore they believe the landlord should also take that amount out of the \$2238.54, leaving a total of \$175.99 still owing to them.
- They dispute the cost of the hot tub entirely, as the hot tub that was at the rental unit was in very poor shape, was falling apart, and leaked and there was never any agreement that they would pay anything for the old hot tub.
- They did not sell the old hot tub; it was removed and taken to the landfill.
- They originally had stated that they would put in a new hot tub, and then negotiate a price for that hot tub with the landlord's when they moved out, however due to financial reasons they were unable to purchase a new hot tub.

Analysis

It's my finding that the tenants do owe the full April 2013 rent in the amount of \$1400.00.

It is also my finding that the tenants are liable for the cost of the repair to the brickwork as the tenants admit causing the damage.

The tenants did not have the right to unilaterally charge the landlords for painting the rental unit and therefore should not have withheld the rent. If the tenants believe the landlord owes them money for work done at the rental unit, the tenants will have to file their own application for dispute resolution.

I deny the claim for the depreciated cost of the hot tub as I am not convinced that the hot tub in the rental unit had any value whatsoever. The tenants have testified that the hot tub was in very poor condition and did not even work properly, and since the landlord has no evidence to the contrary, I will not allow any of the landlords claim for the hot tub. The landlord admits that the hot tub was approximately 12 years old.

I will allow ½ the cost of the filing fee, as I have allowed less than half the amount claimed by the landlord.

Conclusion

I have allowed \$2112.55 of the landlords claim, and I therefore order that the landlords may retain the full security deposit of \$700.00 and I've issued a Monetary Order in the amount of \$1412.55.

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: May 09, 2013

Residential Tenancy Branch

