



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

The tenants application is a request for a monetary order \$1400.00.

The landlord's application is a request for a monetary order floor \$1296.63 and a request to retain the security deposit of \$700.00 towards the claim.

A substantial amount of documentary evidence, photo 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

Are the tenants entitled to monetary order for double their \$700.00 security deposit for a total of \$1400.00?

Is the landlord entitled to a monetary order for \$1296.63?

Background and Evidence

Landlord testified that:

- This is a non-smoking rental unit however when the tenants moved out the unit was left smelling very badly of cigarette smoke.
- They attempted to show the rental unit however everyone who saw it complained of the strong smoke smell and refuse to rent it.
- As a result the whole rental unit will have to be cleaned to try and eliminate the smoke smell and they have supplied an estimate from a professional cleaning company.
- The tenants also took out some of the landscaping and left the property in very poor condition including a large number of weeds throughout the property.
- The tenants also removed some planks that enclose the garden beds and allow the weeds to spread into the garden beds.
- They have had an estimate to have the landscaping repaired.
- The tenants have now paid all the outstanding utility bills and therefore they withdraw this portion of the claim.
- The tenants rent was late on numerous occasions and they are therefore charging late fees in the amount of six times \$10.00 for \$60.00

The total claim their therefore requesting is as follows:

Clean smoke smell from suite	\$500.00
Repair landscaping	\$400.00
Late fees	\$60.00
Filing fee	\$50.00
Total	\$1010.00

The tenants testified that:

- At no time did they ever smoke in the rental unit and any smoking was done outside. They have a small child and would not expose their child to cigarette smoke.
- They didn't remove some planks from the garden beds however those planks were rotten and had spikes sticking out of them and their child had injured himself on one of the spikes.
- As stated by the landlord's all utilities have been paid.
- They do not understand how their rent could ever have been paid late as the landlord had postdated cheques.

- They therefore believe the landlord's full claim should be dismissed and their full security deposit should be returned.

In response to the tenants' testimony the landlord testified that:

- The tenants very definitely did smoke in the rental unit as the unit smelled very badly of smoke.
- The planks in the garden were not rotten and did not have spikes sticking out and the tenancy agreement specifically states that the tenants must get the landlord's permission to change any of the landscaping. The tenants never approached them to change any of the landscaping they simply did it on their own.
- The reason the rent was paid late even though they didn't have postdated cheques is because when they attempted to cash the cheques there were insufficient funds in the account and therefore they had to wait until there was sufficient money in the account to cash the cheques.

Analysis

It is my finding that I accept the landlord's testimony that the tenant smoked in the rental unit, and that there was a strong smoke smell at the end of the tenancy. The landlord has supplied a statement from the cleaning company and in the written estimate it says "best we can to remove smoke smell" and I find it unlikely that the cleaning company would've mentioned the smoke smell if one did not exist.

I therefore allow the landlord's claim for the cost of removing the smoke smell.

I also allow the landlord's claim for the cost of repairing the landscaping. It's very obvious from the photo evidence that the tenants left the landscaping in very poor condition, and took very poor care of the yard.

Further the tenants admit to having removed some of the landscaping and also admit that they never ask the landlord for permission to do so.

The tenant's claim that the landscaping boards were rotten; however they provided no evidence in support of that claim.

I will not however allow the landlord's claims for late rent payments as the landlord has provided no evidence in support of that claim.

I will allow the landlord's request however for recovery of the filing fee.

Therefore the total amount of the landlord's claim that I have allowed is as follows:

Remove smoke odor	\$500.00
Repair landscaping	\$400.00
Filing fee	\$50.00
Total	\$950.00

The tenants have requested an order for return of double their security deposit, however the landlord applied within the 15 day time limit and therefore the doubling provision does not apply.

I therefore will not be allowing any of the tenants claim, as I have allow the landlord's request to deduct the security deposit from the amount of his claim.

Conclusion

I have allowed \$950.00 of the landlord's claim and I therefore ordered that the landlord may retain the full security deposit of \$700.00 and I issued a monetary order in the amount of \$250.00.

The tenants' application is dismissed in full without leave to reapply.

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 09, 2013

Residential Tenancy Branch

