



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, ERP, RP, LRE, LAT, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling two notices to end tenancy Sections 46 and 47;
2. A Monetary Order for compensation - Section 67;
3. An Order that the Landlord make emergency and other repairs – Section 32;
4. An Order suspending or setting conditions on the Landlord’s right to enter the rental unit – Section 70;
5. An Order for the Tenant to change the locks on the unit – Section 70; and
6. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the Hearing, the Tenant confirmed that the tenancy ended and that the Tenant moved out of the unit on September 15, 2013. As a result, the Tenant’s claims contained in the application, with the exception of the claim for compensation and recovery of the filing fee are dismissed.

The Landlord stated that the Landlord named “CK” in the application is not a Landlord or an owner of the unit and asks that this person be removed as a Respondent. The Landlord states that CK only acted as an emergency contact while the Landlord was out

of the country. The Tenant states that CK was named on the tenancy agreement that the Tenant did not sign. The Landlord states that the Tenant was provided a copy of the tenancy agreement, was to have signed the agreement prior to the departure of the Landlord and that CK was not named as a Landlord in the copy provided to the Tenant. It is noted that neither Party provided a copy of the unsigned tenancy agreement. As the burden of proof lies with the party making the claim, and given the conflicting oral evidence from each Party, I find on a balance of probabilities that the Tenant has not proven that CK is a party to a tenancy agreement and I decline to make any orders in relation to CK.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on June 1, 2013 and the Tenant was allowed to move into the unit early on May 25, 2013. There is no executed written tenancy agreement. Rent of \$1,600.00 was payable monthly on the first day of each month. At the outset of the tenancy, the Landlord collected \$800.00 as a security deposit. The Tenant shared the back yard with a lower tenant at the beginning of the tenancy.

The Tenant states that in mid August 2013, the Landlord blocked off part of the back yard that was newly seeded and that as a result, the Tenant was left with a smaller portion of the yard to use and could not exit the backyard without going through the unit. The Tenant claims \$500.00 for this loss. The Landlord states that the yard was fenced off on the last week-end of August 2013 to protect the lawn that had been reseeded after being damaged by the Tenant's dog. The Landlord states that the Tenant was still left with a sizeable yard to use.

The Tenant states that the Landlord put the Tenant's pre-lit 6 foot Christmas tree and three boxes of Christmas decorations in a garage sale without the Tenant's permission.

The Tenant states that the Landlord has agreed that the Tenant could store these items in a shed. The Tenant claims an estimated \$200.00 for the loss of the tree and an estimated \$150.00 for the loss of the decorations. The Landlord agrees that the tree was placed in the garage sale but that there were no Christmas decorations only a few Christmas lawn ornaments. The Landlord states that the tree box had a sticker indicating a cost of \$54.99 and agrees to compensate the Tenant to this amount. The Landlord submitted that the Tenant was previously offered a replacement of the tree at the Landlord's cost. The Landlord states that the outdoor ornaments were sent to a charity a week after the garage sale and that the Tenant could have retrieved them but chose not to.

The Tenant states that in mid August 2013 the Tenant placed a two year old twin mattress alongside the unit underneath a deck on a temporary basis until it could be moved by another person as the Tenant could not move it into the unit. The Tenant states that within a couple of days the Landlord removed the mattress and placed it on the Tenant's stairs. The Tenant states that it rained that day, that the mattress was ruined and that it had to be discarded at a cost of \$15.00 to the Tenant. The Tenant states that the mattress cost \$150.00 new and claims this amount. The Landlord states that the Tenant had left a set of bunk beds by the side of the house at the beginning of August 2013 and that despite being asked by the Landlord to remove the beds and mattresses into the unit, the Tenant left them there. The Landlord states that she resides in the basement suite and came home to find the Tenant's dog had left a large amount of feces on the deck by the landlord's suite and that the Landlord did move it to the Tenant's stairs in order to clean the feces. The Landlord states that when it started to rain the Landlord returned the mattress, that the Landlord states was a foam mattress, back under the covered area.

The Tenant states that the Landlord told her to leave the rent payment for September 2013 under the mat by the Landlord's suite so the Tenant left the rent in cash under the mat at approximately 1:30 p.m. on September 1, 2013. The Tenant states that although she paid the rent to the end of September 2013 and moved out on September 15, 2013

that she expected to return before the end of the month to clean and to take the last few children's toys that were left. The Tenant states that when she returned to the unit a few days after September 15, 2013, the unit's locks were changed and the Tenant could not enter the unit. The Tenant claims refund of a half month's rent for September 2013.

The Landlord states that the Tenant was asked to leave the rent under the suite door, that there are no mats at the common door or at the front door of the unit. The Landlord states that she was at the suite all day and that at no time did the Tenant leave any rent so the Landlord served the Tenant with an eviction notice for non-payment of rent. The Landlord states that the locks were changed by a third party acting for the bank and that this occurred as the Tenant had called the third party to tell them that she was moved out of the unit and that nobody lived in the house. The Tenant does not dispute calling the third party to tell them she had moved out. The Tenant states that she was unsure where the Landlord lived as the Landlord has only been seen on the weekends at the unit making repairs to the damages left from the previous tenant in that unit. The Tenant states that when she called the third party, she told them that she was out of the property and that they could "feel free to change the locks".

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the undisputed evidence that the back yard had been damaged by the Tenant's dog and had been reseeded by the Landlord, and considering that the Tenant still had use of a portion of the yard, I find that the Tenant has not substantiated that the loss of the yard was due to the Landlord's action or that the loss of a portion of the yard caused the Tenant the loss of enjoyment of the yard. I therefore dismiss this claim.

Given the Landlord's agreement for responsibility for the loss of the Christmas tree in the amount of \$54.99, considering the Landlord's evidence that the tree box was marked with this price and considering that the Tenant provided no supporting evidence to substantiate a greater loss or cost for the tree, I find that the Tenant has only substantiated an entitlement to **\$54.99** for the loss of the tree. As the Tenant did not provide any evidence to support the amount claimed in relation to ornaments, I find that the Tenant has failed to substantiate the costs and I dismiss this claim.

Although the Landlord acknowledges moving the mattress from under the deck area, based on the Tenant's evidence that the mattress was left unwrapped and outside the unit, the undisputed evidence that the Tenant allowed its dog to leave feces around the area that the mattress was left, the evidence of the age of the mattress and accepting the Landlord's evidence that the mattress had been outside for longer than a few days, I find that the mattress was of little to no value at the time the Landlord moved it temporarily and that the Tenant has failed to substantiate the loss claimed. I therefore dismiss this claim.

Without determining whether the Tenant paid the rent for September 2013, given the Tenant's evidence that she called the third party and told them they could change the locks, I find that the Tenant by her own act, lost access to the unit for the remainder of the month. Further given the Tenant's evidence that she was moved out of the unit except for a few minor items, I find that the Tenant has not substantiated that the Landlord, by act or negligence, caused any loss to the Tenant for the last two weeks of the tenancy. I therefore dismiss this claim. As the Tenant's application has met only with success in relation to the tree and given that the Landlord previously agreed to replace this tree, I decline to award recovery of the filing fee.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$54.99**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 18, 2013

Residential Tenancy Branch