



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to recover the filing fee and “other”, although details of “other” are already addressed through the remedies requested above.

The tenants attended the teleconference hearing and gave affirmed testimony. As the landlord did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The tenants testified that the Notice of Hearing and Application for Dispute Resolution was served on the landlord by registered mail on September 16, 2013. The tenants provided a registered mail tracking number in evidence and confirmed that the name and address matched the name and new service address of the landlord provided in an e-mail to the tenants dated May 17, 2013 on page 2-8 of the tenants’ evidence package. In that e-mail, the landlord confirms her address to the tenants.

Documents sent by registered mail are deemed served five days after mailing under the *Act*. The tenants provided a tracking history report in evidence that supports that the registered mail package was returned to the tenants as “unclaimed”. The tenants testified that they served the landlord with their evidence by registered mail on December 2, 2013 and that according to the online registered mail tracking information for the tracking number provided in evidence, the evidence was successfully delivered to the landlord as of December 10, 2013. Based on the above, I find the landlord was deemed served with the Notice of Hearing and Application for Dispute Resolution on the fifth day after mailing, in accordance with the *Act*, which would be September 21, 2013. I accept the undisputed testimony of the tenants that the tenants’ evidence was successfully delivered to the landlord on December 10, 2013.

Preliminary and Procedural Matters

During the hearing, the tenants requested to withdraw two portions of their application; namely their request for an order directing the landlords to comply with the *Act*, regulation or tenancy agreement, and “other”. As a result, I have not considered those two portions of the tenants’ application.

Issues to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A four month fixed term tenancy agreement began on October 1, 2012 and required the tenants to provide vacant possession of the rental unit as of January 31, 2013. I note that the year on the tenancy agreement expiry date was listed as January 31, 2012 which was clearly an obvious error and should have read January 31, 2013. Monthly rent in the amount of \$800.00 was due on the first day of each month. The tenants paid a \$400.00 security deposit and a \$400.00 pet damage deposit at the start of the tenancy. On page 1 of 6 of the tenancy agreement submitted in evidence it reads "...the kennel yard is included for tenant + pet use."

The tenants stated that one of the main reasons that they agreed to rent the rental unit, was due to the use of the kennel for their dogs. The tenants have claimed \$1,153.78 comprised of the following:

Item 1. Unpaid hydro owing by landlord	\$268.78
Item 2. Unpaid cable owing by landlord	\$85.00
Item 3. Compensation for loss of use of dog kennel as indicated in tenancy agreement (comprised of \$200.00 for each of the 4 months of the 4 month fixed term tenancy)	\$800.00
TOTAL	\$1,153.78

The tenants stated that they posted a "wanted ad" which was submitted in evidence. The tenants testified that the landlord responded to their "wanted ad" which resulted in the parties signing a written tenancy agreement. In the "wanted ad" the tenants wrote, in part, "a securely fenced yard for 2 well behaved, clean, quiet Whippet dogs..."

Item 1

The tenants have claimed \$268.78 for unpaid hydro bills. In the tenants' evidence, the tenants have included two hydro bill amounts of \$294.55 and \$243.02 which when combined totals \$537.57. According to the tenancy agreement submitted in evidence, on page 2 of 6, the parties have signed where it reads "...Hydro bills to be split 50-50 with owner." The tenants stated that the landlord did not pay her 50% of the \$537.57, which would be \$268.78.

Item 2

The tenants have claimed \$85.00 for a cable bill that remained unpaid prior to the start of the tenancy agreement, which the tenants stated is the responsibility of the landlord

and not the tenants. The tenants submitted an invoice from the cable company which saw as of September 27, 2012, \$85.22 was owed, and the tenancy did not start until October 1, 2012. The rental unit address is listed on the cable bill submitted in evidence.

Item 3

The tenants have claimed \$800.00 in compensation for loss of use of the dog kennel yard as agreed to in writing in the written tenancy agreement. The tenants stated that they assigned a value of \$200.00 per month to the value they placed on the dog kennel yard as the dog kennel yard one of the main reasons that they agreed to rent the rental unit, was due to the dog kennel area being included in the rental agreement. The tenants stated that as of October 1, 2012, the landlord locked the dog kennel and responded to the tenants' e-mail advising the landlord that she was in violation of the lease and to unlock the kennel. In the October 1, 2012 e-mail from the landlord, the landlord wrote to the tenants:

“...there are reasonable conditions for the use of the kennel yard. It is a shared space just like the firepit which he rules as well. You are well aware of these conditions...I will not permit the kennel yard to be misused. We will have to have a meeting about this...”

[reproduced as written]

The tenants stated that the landlord ultimately did not unlock the kennel for the remainder of the tenancy, which is the reason they are now seeking compensation for the loss of the kennel yard area which was agreed to in writing as part of the tenancy agreement. By locking the dog kennel area, the tenants stated that they were not able to use the area agreed to as part of the tenancy agreement. The tenants also stated that there were no rules regarding the use of the dog kennel area agreed to in writing or presented to them to sign when the tenancy agreement was signed by the parties.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Item 1 – Based on the undisputed testimony of the tenants and the documentary evidence submitted by the tenants which supports this portion of their claim, **I find** the tenants have met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$268.78** for the landlord's portion of the unpaid hydro bill.

Item 2 - Based on the undisputed testimony of the tenants and the documentary evidence submitted by the tenants which supports this portion of their claim, **I find** the tenants have met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$85.22** for the unpaid cable bill which I accept was not paid by the landlord prior to the start of the tenancy. I note that the actual cable bill was 22 cents higher than the \$85.00 being claimed in the tenants' application, and have granted the full amount of \$85.22 to the tenants as a result as \$85.22 is not significantly more than the original amount being claimed.

Item 3 - Based on the undisputed testimony of the tenants and the documentary evidence submitted by the tenants which supports this portion of their claim, **I find** the tenants have met the burden of proof for this portion of their claim and are entitled to compensation in the amount of **\$800.00** due to the landlord locking the kennel yard area which the written tenancy agreement clearly indicates was included in the tenancy agreement. **I find** that \$200.00 per month is a reasonable claim given the importance of that kennel space to the tenants which is supported by the tenants' wanted ad which indicated that the tenants were seeking an area for their two dogs. **I find** the landlords breach the written tenancy agreement by terminating a facility, the dog kennel yard, which was agreed to in writing in the tenancy agreement and did not include written conditions of use as part of the tenancy agreement in the evidence before me.

As the tenants' application had merit, **I grant** the tenants the recovery of their **\$50.00** filing fee.

I find that the tenants have established a total monetary claim of **\$1,204.00** comprised of \$268.78 for unpaid hydro owed by the landlord, \$85.22 for unpaid cable owed by the landlord, and \$800.00 for compensation for loss of use of the dog kennel yard during the four month tenancy, plus the \$50.00 filing fee.

I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,204.00**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenants have established a total monetary claim of \$1,204.00. The tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of

\$1,204.00 which must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 15, 2014

Residential Tenancy Branch