



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, a monetary order and an order compelling the landlord to return his security deposit and a cross-application by the landlord for a monetary order and an order authorizing him to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing, the tenant confirmed that he had received the landlord's application for dispute resolution and evidence. The landlord claimed that he had not received the tenant's application for dispute resolution and evidence, but the landlord's agent confirmed that the landlord had given those documents to her. I found that both parties had notice of the claims made against them and the hearing proceeded.

At the hearing, the parties agreed that the tenancy had ended. As the tenancy is over, I consider the tenant's application to set aside the notice to end tenancy to have been withdrawn.

At the hearing, the landlord's agent advised that the landlord was withdrawing the claim for loss of income for the month of June and the tenant advised that he was withdrawing his claim for the cost of cancelling his Telus account.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began in the second week of March 2013 and ended when the tenant vacated the unit on June 2, 2014. They further agreed that rent

was set at \$800.00 per month and that the tenant had paid a \$400.00 security deposit at the outset of the tenancy. They further agreed that the residential property contains 2 detached houses. The tenant lived in the home at the front of the property and shared the back yard with the residents of the home at the back of the property (the "Rear Home").

The tenant testified that in February, the landlord advised that someone would be moving into the Rear Home with a dog. On March 1, the new occupant (the "Occupant") arrived with 4 dogs, 3 of which were pit bulls. The tenant introduced himself to the Occupant who was not willing to introduce his dogs to the tenant's dog.

The tenant testified that on March 21, he received a phone call from his wife who stated that his dog had almost been killed. The wife explained that she let the dog into the back yard and that while the dog was in the yard, the Occupant released his 4 dogs. The wife explained that she heard someone say, "Quick, get the dogs, they've got him by the neck." The wife heard the dog screaming and the dog entered the rental unit bleeding from the neck and shoulder. The wife took the dog to the veterinarian and the tenant incurred a bill for \$318.63 which the tenant seeks to recover from the landlord. The tenant claimed that the landlord knew that the Occupant had pit bulls and intentionally lied to the tenant so the tenant would agree to allow the Occupant to reside in the Rear Home. The landlord's agent argued that the landlord is not responsible for the Occupant having violent pets.

The parties agreed that the tenant reported the attack to the landlord the following day. The landlord initially said he would give the Occupant a notice to end tenancy, but returned to the tenant and advised that instead of ending the Occupant's tenancy, he would install a wood fence to separate the yard into 2 distinct areas. The tenant indicated to the landlord that this would be an acceptable solution. The tenant testified that in mid-April, the landlord erected a snow fence held together with zip ties. When the tenant advised that this would not accomplish the purpose of separating the Occupant's dogs from the tenant's dog, the landlord simply replied that he could not afford to install a wood fence. The landlord did not dispute this testimony.

The tenant seeks to recover \$600.00 in moving costs which he claims he would not have had to incur had the landlord either evicted the Occupant or erected a wooden fence to keep the Occupant's dogs in check. The tenant further seeks to recover \$400.00 for each of the approximately 2 months in which he was unable to use the back yard because of the threat posed by the Occupant's dogs. The tenant claimed that he would not have rented the unit if he had known that he would be unable to use the back yard. The landlord agreed that the tenant was entitled to some compensation, but

argued that a return of half the months' rent for each of the 2 affected months was excessive.

The tenant seeks the return of double his security deposit. The landlord claimed that he gave the tenant a \$600.00 cheque, \$400.00 of which represented the deposit and \$200.00 of which represented a loan. The tenant denied having received this payment.

The tenant testified that the landlord asked him if he was willing to move out. The tenant testified that the landlord agreed that the tenant would not have to pay rent for the month of May and would vacate the unit on June 2. The landlord denied having relieved the tenant of his obligation to pay rent in May. The parties agreed that on May 22, the landlord issued the tenant a 10 day notice to end tenancy for unpaid rent. The landlord seeks to recover unpaid rent for the month of May.

The landlord seeks to recover \$527.30 as the cost of repairing a door frame which he claims was damaged by the tenant. The tenant agreed that the door was damaged, but claimed that the damage was already there when he moved into the rental unit.

The landlord seeks to recover \$400.00 as the cost of cleaning the rental unit at the end of the tenancy. The landlord claimed that the tenant did not clean the unit and left behind belongings which had to be removed. The landlord provided a copy of a cheque which had not been negotiated as proof that he paid \$400.00 for cleaning. The tenant testified that the landlord took the photographs between the time he left with the moving truck and the time he returned to clean the unit and collect the last of his belongings. The tenant argued that he completely cleaned the unit. The parties agreed that the parties did not conduct a move-out inspection of the unit and did not complete a condition inspection report.

Both parties seek to recover the \$50.00 filing fees paid to bring their respective applications.

Analysis

I will first address the tenant's claim. While the tenant is distressed that the landlord allowed the Occupant to move into the Rear Home with 4 dogs, there is no evidence that the tenant had any contractual right to determine who would be permitted to occupy the Rear Home and there is no evidence to show that the landlord knew or should have known that the Occupant's dogs were prone to violence. While pit bulls may have a reputation as an aggressive breed, I am not prepared to take judicial notice that every pit bull is a violent dog. Because the landlord was not the owner of the pit bulls, in order for the landlord to be held liable for the attack on the tenant's dog, the tenant has to

prove that the landlord was negligent in permitting the Occupant to move into the Rear Home. In the absence of evidence that the landlord knew that these particular dogs were violent or posed a risk to the tenant, his family or his dog, I find that the landlord cannot be held responsible for the attack and I therefore dismiss the claim for recovery of the veterinarian bill.

On March 22, the tenant notified the landlord that the Occupant's dogs had exhibited violent behaviour and wounded his dog. As of that date, the landlord had an obligation to take action to ensure that the tenant's quiet enjoyment of the residential property was preserved. At the hearing, the landlord did not deny that the Occupant's dogs had attacked the tenant's dog, nor did he argue that the dogs did not pose a future risk. I find that the landlord failed to meet his obligation to ensure that the tenant, his family and his pet were safe from the threat posed by the Occupant's dog and I find that the tenant was forced to move as a result of that failure. I find that the tenant is entitled to recover the \$505.05 in moving costs and I award him that sum.

I find that the tenant is entitled to recover some of the rent paid for the 2 months in which he was unable to use the yard but I agree with the landlord that the value of this loss is not equivalent to half the rent paid during that period. I find that a rebate of \$150.00 per month will adequately compensate the tenant and I award him \$300.00.

I dismiss the tenant's claim for double the security deposit and find that the most he is entitled to is the base amount of the deposit. The tenant filed his claim for the return of double his security deposit prior to vacating the rental unit and he is not entitled to make that claim until 15 days after having vacated the rental unit and provided his forwarding address to the landlord. I award the tenant \$400.00.

Turning to the landlord's claim, although the tenant claimed that the landlord did not require him to pay rent in the month of May, there is no evidence to corroborate this claim and I find that the tenant was obligated to pay rent in that month. Because the tenant was unable to use the backyard in May, I have applied the \$150.00 discount to the \$800.00 owed and I award the landlord the balance of \$650.00.

I dismiss the landlord's claim for the cost of repairing damage to the door. The landlord was obligated to inspect the unit together with the tenant both at the beginning and the end of the tenancy and he failed to do so. The tenant claims that the damage to the door was in place at the outset of the tenancy and without a condition inspection report or other evidence to corroborate the landlord's claim that the door was in good condition at that time, I find that the landlord has not proven that the tenant caused the damage.

As for the landlord's claim for the cost of cleaning, again, the landlord did not perform a condition inspection with the tenant at the end of the tenancy and I find it entirely possible that the landlord's photographs could have been taken prior to the time the tenant completed moving and cleaning. Further, the landlord provided a copy of a cheque which had not been negotiated and I find that there is inadequate proof that the landlord paid someone to clean as there is no evidence that funds left the landlord's bank. I dismiss the claim for cleaning.

As each of the parties have enjoyed some success in their applications, I order that they each bear their own filing fees.

Conclusion

The landlord has been awarded \$650.00 and the tenant has been awarded \$1,205.05 which represents \$505.05 for moving costs, \$300.00 for loss of use of the back yard and \$400.00 for his security deposit. Setting off these awards as against each other leaves a balance of \$555.05 owed to the tenant by the landlord. I grant the tenant a monetary order under section 67 for \$555.05. This order may be filed in the Small Claims Division of the Provincial 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: July 31, 2014

Residential Tenancy Branch

