Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with applications from both parties. The landlords applied for an order authorizing them to retain the security deposit and the tenants applied for an order compelling the landlords to return double the security deposit and pay other compensation. Both parties participated in the conference call hearing.

At the hearing, the landlords advised that with their application for dispute resolution, they had also provided a copy of the condition inspection report and a copy of a Residential Tenancy Policy Guideline. This evidence was not received by the Branch. However, the tenants submitted a copy of the condition inspection report with their evidence and the policy guideline is part of what I am required to consider in any event, so the landlords has not been prejudiced by his evidence not having been received.

The landlords filed their application for dispute resolution on April 13 and provided the address of the rental unit as their address for service. The tenants filed their application for dispute resolution on June 1 and provided evidence showing that they served the landlords with their copy of the application and evidence by sending it via registered letter to the rental unit. The package was returned unclaimed and the tenants provided evidence that the house had been sold and also provided a letter from the new owner stating that they did not have the landlords' new address.

The landlords claim that it was not their fault that they did not receive the tenants' application and evidence. They stated that they were still residing in the rental unit on June 1 and would have received the package had it been sent on that date and further stated that the new owners of the property had their forwarding address and should have either forwarded the package or telephoned them to advise that it was waiting for them. They further argued that the tenants should have telephoned them to advise that the package was available.

The tenants' provided irrefutable proof that the package was sent to the rental unit via registered letter. The landlords chose to provide that address as their address for service and it was their failure to update their address with the Residential Tenancy Branch and the tenants and to arrange for their mail to be forwarded by Canada Post that caused them to not receive the package. The new owners of the unit had no legal responsibility to forward mail to them. I found that the landlords chose to give an incorrect address for service and as the tenants did all that was required of them with respect to service, I proceeded to hear the tenants' claim. I note that given the outcome of the hearing as recorded below, the landlords have not been prejudiced by not having advance notice of the tenants' claim as the tenants were largely unsuccessful in their claim.

Issues to be Decided

Should the landlords be permitted to retain the security deposit?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on January 15, 2012 and that the tenants paid a $1,100.00 security deposit at that time. They further agreed that the rental unit is a single family home of which the tenants were the sole occupants.

The landlords seek to retain the security deposit, claiming that after the tenancy ended, they sold the home at a $5,000.00 loss because the tenants failed to maintain the lawn properly, allowing an excessive amount of moss to grow, that they damaged the fence and damaged the stucco. They testified that their realtor told them to reduce their asking price because no one would purchase the home with those damages and landscaping issues.

The tenants argued that their lawn maintenance obligations were restricted to watering and mowing the lawn rather than removing moss and provided a letter from the new owner in which the owner stated that a $5,000.00 reduction of price was negotiated solely for appliances.

The tenants seek an award of double their security deposit as well as compensation for the inconvenience and labour involved in responding to the landlords' claim against them and filing their own claim.

The tenants also seek compensation for the labour involved in removing a tree which fell during the tenancy. The tenants testified that a tree on the property fell onto a

neighbour's property. The neighbour complained to the tenants and the tenants cut up and removed the tree. The tenants acknowledged that they did not request compensation from the landlord, nor did the landlords offer it.

Both parties seek to recover the filing fees paid to bring their respective claims.

Analysis

First addressing the landlords' claim, the landlords bear the burden of proving their claim. The landlords have not provided a letter from their realtor showing that it would not have been possible to sell the property at an increased price due to the alleged damage and the landlords have not provided photographs showing that the alleged damage goes beyond what may be considered reasonable wear and tear or that the moss is as excessive as claimed. In the absence of evidence to corroborate their claim and prove that they have suffered a compensable loss, I find that the landlords have not proven their claim. I dismiss the landlords' claim in its entirety.

Turning to the tenants' claim, I dismiss the claim for double the security deposit. The only circumstances under which the landlords would be liable for double the deposit would be if they failed to file their application within 15 days of the end of the tenancy. The landlords filed their claim within 13 days of the end of the tenancy and are therefore not liable for double the deposit.

As the landlords have been unsuccessful in proving that they are entitled to retain all or part of the deposit, I order the landlords to return the deposit to the tenants and I award the tenants $1,100.00.

I dismiss the tenants' claim for the inconvenience and work involved with filing their claim and answering the landlords' claim. Under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee.

I also dismiss the tenants' claim for the value of their labour in removing the tree that fell onto the neighbour's lawn. This is not characterized as an emergency repair under the Act, and the only way in which the tenants could succeed in this claim is if they had an agreement with the landlords that they would be compensated for that labour. In the absence of such an agreement, I find that the landlords had no legal obligation to compensate them.

As the tenants have been partially successful in their claim, I find they should recover one half of their filing fee and I award them $25.00 for a total award of $1,125.00. I grant the tenants a monetary order under section 67 for this sum. This order may be

filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlords' claim is dismissed. The tenants are awarded $1,125.00.

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 15, 2015

Residential Tenancy Branch