



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, OPC, FF (Landlord's Application)
CNC, MNDC, FF (Tenants' Application)

Introduction and Preliminary Matters

This hearing convened as a result of cross applications. In the Landlord's application for dispute resolution she sought an Order of Possession based on cause, a Monetary Order for damage to the rental unit, an Order permitting her to retain the security deposit and to recover the filing fee. In the Tenants' application, they sought an Order canceling the Notice to End Tenancy for Cause, a Monetary Order for money owed or compensation for damage or loss and to recover the filing fee.

This hearing occurred over two days. Both parties appeared at the hearings on July 6, 2015 and September 10, 2015. At the outset of the July 6, 2015 hearing the parties confirmed that the Tenants vacated the rental unit on June 30, 2015, accordingly, the Landlord's request for an Order of Possession and the Tenants' request for an Order cancelling the Notice to End Tenancy for Cause were no longer applicable. Accordingly, I dismissed those applications.

At the July 6, 2015 hearing I informed the parties that the Landlord's application for an Order to retain the security deposit was premature as the Tenants had yet to provide their forwarding address. Further, during the July 6, 2015 hearing, the parties confirmed that the Landlord did not comply with the Act by failing to perform an incoming condition inspection report thereby extinguishing her right to claim against the deposit for damage to the rental unit. The Tenants provided the Landlord with a forwarding address and I directed the Landlord to return the security deposit to the Tenants. At the September 10, 2015 hearing the parties confirmed the Landlord had in fact returned the security deposit as directed and therefore the parties' applications with respect to the security deposit were dismissed.

The Landlord sought a Monetary Order for damage to the rental unit alleging that the Tenants had removed a large section of grass in the left hand side of the back yard of the rental property as well as a large rectangular piece of concrete from the patio leaving two large pieces of bare land.

The Tenants argued that the bare area on the left hand side of the back yard never had grass as it was removed by the previous renters. The Tenants also alleged that no such concrete was ever in existence as alleged by the Landlord and that in fact, persons acting on behalf of the Landlord removed the grass in order to address flooding issues caused by the grade of the land.

At the conclusion of the July 10, 2015 hearing I directed the Landlord bring to the next hearing, T.L., the contractor hired to address the garage flooding issues, as well as a representative of the company hired by T.L., whom the Tenants indicated had the initials "A.", or "A.A.A." The Landlord complied with my direction and T.L. was available to testify at the September 10, 2015 hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenants?
2. Are the Tenants entitled to monetary compensation from the Landlord?
3. Should either party recover the filing fee?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which indicated that this tenancy began November 1, 2014. Monthly rent was payable in the amount of \$2,100.00 and the Tenants paid as security deposit of \$1,050.00 on or before October 12, 2014.

As the Tenants filed first, I permitted them to present their case first.

Tenant's Claim for a Monetary Order

The Tenants claim that due to flooding of the rental unit on April 28, 2015, two inches of water came into their daughter's bedroom and as a consequence the mattress (which had been placed on the floor) was damaged and required replacement. Introduced in evidence was a copy of a text message from the Tenant's cell phone to the Landlord wherein she writes that the hot water tank "blew up" and emergency repairs were needed to be done right away.

Also introduced in evidence by the Tenants was a photo (identified as 4 on the back) of the eaves trough and downspouts with water pouring out of the eaves trough onto the ground below. The Tenants have written, "eaves troughs all of the roof needs replacing" on that photo. The Tenants allege that the foundation of the rental unit is cracked and as such moisture from rain or lawn watering enters the rental unit which caused regular water issues in the rental unit.

Introduced in evidence by the Tenants was a copy of a quote for replacing the mattress in the amount of \$780.35. The Tenant testified that when they asked the Landlord to provide the funds necessary to replace the mattress, or to have their rent reduced by the same amount, the Landlord refused. The Tenants allege that instead the Landlord issued the Notice. As noted previously, the Notice was issued on May 13, 2015.

In response to the Tenants' claim, the Landlord testified that although there was in fact a cracked foundation, she did not see any water damage as alleged by the Tenants.

The Landlord confirmed that she does not live in the community in which the rental unit is located and did not attend the property until May 4, 2015, approximately six days after the Tenants say the flooding occurred. She also stated that she hired a restoration company to address the water issues and a man whom she identified only by his first name, "H", told her that there could not have been as much water as the Tenants alleged because of the lack of water on the drywall.

Landlord's Claim for a Monetary Order

The Landlord claimed the sum of \$2,050.00 from the Tenants alleging that the Tenants removed a large concrete slab from the back yard as well as a rectangular area of grass for the purposes of a garden plot. The Landlord submitted photos of both areas, as well as photos taken before the tenancy began. Each of those photos was identified on the back with numbers and for ease of reference I will use the numbers as indicated on the back of the photo.

- “**6B**” depicts the back yard and appears to have a date of “8 25 ‘01”. A man is shown mowing the lawn near a chain linked fence. Five cedar trees are shown which appear to be marginally taller than the fence. Five rectangular areas of the concrete patio are visible creating an irregular shape. This photo confirms that the area which the Landlord claims was covered by concrete is in fact covered in grass.
- “**6A**” was allegedly taken at the end of the tenancy and shows two rectangular bare areas, one of which was located on the left hand side of the back yard to the right of a chain link fence, the other directly connected to the concrete patio.. The cedar trees which were shown in **6B** are no longer visible. A black transport truck is seen on the left hand side of the chain link fence.
- “**9**” depicts the back yard and deck facing the rental home. Two rectangular concrete areas are shown with a red vehicle parked across both.

When I asked the Landlord to particularize the amounts she sought she responded as follows.

She stated that she sought “\$600.00-\$700.00” in compensation for the cost of soil, seed and fertilizer to replace the grass area by the fence which the Landlord claimed the Tenants removed for a garden.

Introduced in evidence was an estimate from L.L. a landscaping company in a community near the Landlord’s residence (notably, not in the community in which the rental unit is located). Also introduced in evidence was a text from L.L. wherein they wrote: “600\$-700 is soil seed fertilizer trucking machine grading roll it ect...” [Reproduced as Written].

Also introduced in evidence by the Landlord was a text message between herself and someone identified as “L.T.[city name]”. In this text, the Landlord has provided photo 6A as noted above. She also writes the following, “The missing grass by the truck, 27 x 27 ft. Soil, seed fertilizer and labour.” The response from L.T.[city name]” is “The cost would be \$2,100”.

The Landlord also stated that she sought “between \$1,500.00-\$2,000.00” for the cost of replacing the concrete which the Landlord claimed the Tenants had removed. Introduced in evidence was a quote from W.H. wherein they quote \$1,500.00 for the cost of 2 metres of concrete and concrete finishing.

Introduced in evidence was a document identified as a “statement” wherein two individuals, P.S. and J.C., confirm that the concrete slab went “missing” and that they observed a welding business on the property. Neither P.S. nor J.C. attended the hearing to give evidence or be cross examined.

Also introduced in evidence was an unsigned letter from S.L. who claimed to be a former tenant. He writes that he was a tenant “for about a year”. Notably, he does not identify when that year occurred. Further he writes “the concrete slab in the backyard was in very good shape...” He does not identify the size or shape of the concrete slab.

Tenants' Response to Landlord's Monetary Claim

Both parties submitted photos of the rental unit. The Tenant submitted a photo which was also identified as "9" and which depicted the backyard and the concrete area. This photo was apparently taken at the start of the tenancy and shows grass where the Landlord claims the missing concrete was located. The Tenants have written "no concrete" on this photo. This photo also depicts a large utility trailer located on the concrete slab full of miscellaneous items. At the top of the photo, which is partially obstructed by the trailer, grass is seen where the Landlords allege concrete was located. The Tenants testified that the items in the utility trailer were in fact left from the previous renters. (As the Landlord also submitted a photo identified as "9", I will refer to this as "T9" for the purposes of this decision.)

The Tenants also introduced in evidence a photo identified as "8". This photo is date stamped "11-01'2014" and also shows the above-mentioned utility trailer and concrete slab. .

At the September 10, 2015 hearing, the Tenants also submitted photos taken by "Google Earth", an online geographical information system which also shows three dimensional aerial photos. Historical imagery is also available and was provided by the Tenants. These photos clearly show no concrete in the disputed area. At the hearing I confirmed with the Landlord that she had access to the internet and Google Earth, although she stated her computer "crashes sometimes". A review of the Google Earth historical images confirms that the concrete patio was an irregular shape, and that no such concrete existed in the area as alleged by the Landlord.

As noted previously in this my decision, the Landlord called J.L. as a witness during the September 10, 2015 hearing. J.L. testified that he was hired by the Landlord to install a rock catch basin and a pipe to pick up rain flow from the garage gutters. J.L. confirmed that his company did not remove a concrete slab.

J.L. also confirmed that his son was the previous renter at the rental unit and that when his son resided there, the "concrete was there". He then confirmed the Landlord had provided him a photo of the disputed area in preparation for his testimony. It was determined that the photo he was looking at, and which had been provided by the Landlord, was in fact the photo submitted by the Tenant and which he identified as "9" and I have identified as "T9" in this my decision. J.L. confirmed that the photo he viewed matched my previous description of T9.

J.L. stated that it was his son who removed the grass from the left had side of the property in order to install a skate ramp. J.L. further confirmed that the skate ramp was located on the rental property for 2-3 years such that when the Tenants moved in, the grass was already gone.

Analysis

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.

In this instance, both parties bear the burden of proving their respective claims and each must prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, they must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that they took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Tenants' Monetary Claim

I find that the Tenants have established their claim for monetary compensation for the cost of replacing their daughter's mattress. I find that the rental unit experienced flooding during the tenancy and that this flooding caused damage to the Tenants' property. While the Landlord stated she did not see any water, and disputed the extent of the water damage, she conceded that she was not at the property until sometime after the flood had occurred and she confirmed she hired a restoration company to address the water damage.

I find that rather than address the Tenants' claim for compensation for the damaged mattress, the Landlord issued the Notice.

In this instance, I accept the Tenants testimony over the Landlord's and find that the Tenants have proven the mattress was damaged due to flooding of the rental unit. I also find that the Tenants' loss stemmed directly deficiencies with the rental unit, including a cracked foundation, faulty water tank, and ineffective storm drainage. The Tenants have provided evidence of the cost of replacement, and have therefore verified the value of their loss as \$780.35. Accordingly, I award them compensation in the amount of **\$780.35** and grant them a Monetary Order for this sum. This Order may be filed and enforced in the Provincial Court (Small Claims Division).

Landlord's Monetary Claim

During the hearing, the Landlord claimed the Tenants removed a large area of grass, approximately 27 feet by 27 feet in the back left hand corner of the rental yard. On her application for dispute resolution she described this area as being 15 feet by 15 feet. In any case, the Tenants admit they wished to install a garden bed in that area, but deny removing the grass and allege the grass was removed by the previous renters.

On September 10, 2015, the Landlords witness, T.L., testified that the grass area in the backyard was removed or damaged due to the installation of a skate park by the previous renter, who also happened to be his son. I accept his evidence in this regard.

Accordingly, I find that the Landlord has failed to prove that the loss allegedly incurred as a result of the missing grass stemmed directly from any actions on the part of the Tenants. I find that it is more likely that the grass was missing at the start of the tenancy as a consequence of the previous renters actions. Accordingly, I dismiss the Landlord's claim for compensation for missing grass in the back yard of the rental property.

I also dismiss the Landlord's claim for compensation for replacing the "missing concrete". The photos submitted by the parties establish that no such concrete pad ever existed. I prefer the photographic evidence over the letters submitted by the Landlord. Those letters were not sworn, nor were the writers present at the hearing to give affirmed testimony or to be cross examined. Finally, I find their statements to be too general to support a finding that the concrete patio was altered by the Tenants.

J.L. testified on behalf of the Landlord. He confirmed he had not been to the rental unit since the tenancy ended, and relied on the photo provided by the Landlord. While he initially stated that the concrete pad was intact when his son lived there, and then appears to be gone now, his testimony on this point is inconsistent with the photographic evidence.

The photo, "6B", submitted by the Landlord and apparently taken in 2001, clearly shows an irregularly shaped concrete patio. Further, as noted, the historical images submitted by the parties, confirm that the area which the Landlord claims was covered by concrete was in fact covered in grass.

Accordingly, I find that the Landlord has failed to prove the Tenants removed the concrete pad and as such I dismiss their claim for compensation.

The Landlord's claim is dismissed in its entirety.

The Tenants, having enjoyed success at this hearing are entitled to recover the filing fee paid in the amount of \$50.00. Accordingly, I grant them a Monetary Order in the total amount of **\$830.85**. This Order may be filed and enforced in the Provincial Court (Small Claims Division).

Conclusion

The Tenants are granted a Monetary Order in the amount of \$830.85 including recovery of the filing fee. The Landlord's claim is dismissed.

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: September 21, 2015

