



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes: MNDC, FF

Introduction

In response to the tenant's application a hearing was originally convened on June 26, 2015. While the landlord appeared the tenant did not, and by decision dated June 26, 2015 the tenant's application was dismissed. The tenant then applied for review consideration, and by review consideration decision dated August 07, 2015 the tenant's application was allowed, and the decision of June 26, 2015 was "suspended until a review hearing has been completed." This review hearing was scheduled to begin at 9:30 a.m. by way of telephone conference call on October 20, 2015. Both parties attended and / or were represented and gave affirmed testimony.

The tenant testified that the "monetary order worksheet" enclosed with her other documentary evidence reflects all issues that currently remain in dispute. In summary, the tenant seeks a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy began on February 22, 2015. Monthly rent of \$800.00 was due and payable in advance on the first day of each month, and a security deposit of \$800.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

Pursuant to an "addendum" to the tenancy agreement, it was agreed that as a condition of the tenant's payment of only ½ of what would otherwise have been monthly rent of \$1,600.00, she would undertake "gardening yard clean-up - Beautification" in the unit's yard / garden. Included in "beautification" work begun by the tenant was partial removal of a large shrub. However, as a result of an unrelated injury she sustained prior to

completion of this job, she found herself unable to completely remove the stumps and related debris. The tenant claims the landlord then imposed a 2 day deadline on her for completing the cleanup. In the result, the tenant paid a third party \$375.00 to complete the work. The tenant considers that this cost ought to be borne by the landlord. However, the landlord considers that the shrub's removal was not "beautification," and that the tenant removed a shrub with some value to the landlord without permission.

As to the second matter in dispute, the tenant testified that in March 2015 the landlord requested rent in the amount of \$200.00, for the period while the tenant had possession of the unit from February 22 to 28, 2015. During that time the tenant gave access to workers who entered the unit to refinish hardwood flooring. The tenant claims that the work and the fumes precluded her from actually living in the unit for that week, and that for various reasons the unit was unable to be properly ventilated. Further, the tenant claims that "all furniture stacked in kitchen + bedroom" created "unliveable conditions." During this time the tenant claims she lived in her campervan which was parked in the driveway, and her occasional use of the unit was limited to washroom facilities. The tenant considers that she is entitled to a reimbursement of the full \$200.00.

Tenancy ended May 31, 2015, a move-out condition inspection report was completed with the participation of both parties, and the tenant provided her forwarding address on the report. With the passage of time, the tenant's concern around the disposition of the security deposit was resolved with the landlord. While the landlord proposed a resolution of the remaining matters in dispute prior to the hearing, the tenant declined the proposals and the still unresolved matters as set out above are addressed below.

Analysis

\$375.00: stump grinding / chipping / debris removal

In view of the conflicting perspectives on this matter, and in the absence of any compelling or conclusive documentary evidence from either party, I find on a balance of probabilities that the tenant has established entitlement limited to recovery of **\$187.50**.

\$200.00: repayment of rent for the period from February 22 to 28, 2015

While I find that the tenant made some use of the unit for washroom facilities, and used the driveway for parking her campervan during this week, I also find that the tenant's ability to make full use of the unit was impeded by work undertaken to refinish the hardwood floors during a limited portion of that time. In the result, I find that the tenant has established entitlement limited to recovery of **\$100.00**.

\$50.00: *filing fee*

As the tenant has partially succeeded with her application, I find that she has established entitlement to recovery of ½ the filing fee in the amount of **\$25.00**.

Total entitlement: \$312.50

Section 82 of the Act addresses **Review of director's decision or order**, in part:

82(1) Unless the director dismisses or refuses to consider an application for a review under section 81, the director must review the decision or order.

(2) The director may conduct a review

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from all of the above, the decision dated June 26, 2015 is hereby set aside.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$312.50**. Should it be necessary, this order may be served on the landlord, 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 21, 2015

Residential Tenancy Branch

