



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was originally scheduled for October 28, 2015. Due to an unanticipated unavailability of an arbitrator the first hearing was re-scheduled to be hearing the following day – October 29, 2015.

Due to technical difficulties, the landlord was unable to call into the hearing on October 29, 2015 and the hearing was re-scheduled again to November 3, 2015. The landlord sent her agent to the November 3, 2015 hearing to request an adjournment because she had been unexpectedly hospitalized.

As per my Interim Decision dated November 3, 2015 I granted the landlord an adjournment to January 6, 2016. Both parties attended the January 6, 2016 hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for compensation for yard cleaning and other yard work and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on April 20, 2014 for a 1 year fixed term tenancy beginning on June 1, 2014 for the monthly rent of \$1,600.00 due on the last day of each month with a security deposit of \$800.00 and a pet damage deposit of \$800.00 paid.

The tenancy agreement submitted and signed by both parties indicated that it included an addendum of 2 pages. The landlord did submit a copy of a two page addendum that was unsigned by either party. The tenant submitted that she did not recall seeing such an addendum.

Clause 13 of this addendum states: "It is understood the tenant(s) will be responsible for maintaining the front and side lawns. The lawns will be cut regularly. The gravel areas will be raked and kept free of weeds. The landlord will be responsible for payment to the lawn service company."

The landlord submits that in addition to the tenancy agreement and addendum the parties had a verbal agreement that the tenant would have a friend take care of the gardens and plants.

The parties agree that on or before March 30, 2015 the tenant provided her notice to the landlord that she intended to end the tenancy and vacate the rental unit as of April 30, 2015.

The tenant submitted that she was scheduled for a kidney transplant in the beginning of May 2015 and would be required to be in another community for an 8 week period and could not have been able to move at the end of the fixed term (May 31, 2015). The tenant confirmed that she did not end the tenancy as a result of any breach of a material term of the tenancy.

The landlord submitted that as of April 2, 2015 she entered into a tenancy agreement with a new tenant effective May 15, 2015. The landlord seeks rent in the amount of \$774.00 for the period of May 1, 2015 to May 14, 2015. The tenant does not disagree with this claim.

The landlord also seeks compensation for the tenant's failure to clean up the garden areas including the removal of weeds; replanting; removal of dog feces and raking of weeds from rocks over the back yard area in the amount of \$405.00 based on 27 hours work at \$15.00 per hour.

The landlord also seeks compensation for replacement flowers; grasses; plants in large side garden and two small gardens, and the replacement of roses on a trellis near an arbour at the side entrance to the garden.

The landlord stated that a move in inspection of the house was done but that a move out inspection was not completed because she had to be away for a family emergency when the tenancy ended.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;

3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

As the tenant confirmed that she did not end the tenancy as a result of a landlord's breach of a material term of the tenancy agreement and that she does not disagree with the landlord's claim for lost revenue, I find the landlord has established she is entitled to compensation in the amount claimed of \$774.00.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

In regard the landlord's claim for compensation for yard work, I find the landlord has failed to provide any evidence of the condition of the yard either at the start or end of the tenancy. Such evidence could have included a condition inspection report or even photographs to record the condition.

As the landlord has provided no such of evidence of the condition, I find she has failed to provide evidence that the condition of the yard and/or plants warrant cleaning or replacement and that her claim results from any actions of the tenant during the tenancy.

Further, I find that the tenancy agreement addendum very specifically assigns responsibility for lawn cutting to the tenant and the payment of lawn servicing to the landlord. However, Clause 13 states simply: "The gravel areas will be raked and kept free of weeds" with no indication of who will be responsible for this work – the landlord or the tenant.

Section 6(3)(c) states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. I find that this term in the tenancy agreement does not clearly assign an obligation to the tenant for raking the gravel areas and is therefore not enforceable.

As such, I dismiss the landlord's claim for any of the yard work claimed.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$799.00** comprised of \$774.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application, as she was only partially successful.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 08, 2016

Residential Tenancy Branch

