



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenants. The landlord and the tenants participated in the teleconference hearing.

At the outset of the hearing, the parties confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. The parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on March 1, 2015. The rental unit is the basement suite of a house. The previous occupant of the suite was the landlord's father. During the tenancy there was no other tenant renting the upper portion of the house. Rent in the amount of \$1,100.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenants in the amount of \$550.00. The landlord did not carry out a move-in inspection with the tenants at the outset of the tenancy.

On May 25, 2015 the landlord served the tenants with a notice to end tenancy for landlord's use. The notice indicated that the reason for ending the tenancy was that the landlord or a family member of the landlord was going to occupy the unit. The tenancy ended on August 1, 2015. On that date, the landlord and the tenants carried out a move-out inspection with the landlord. The tenants did not agree that they were

responsible for the dead lawn in the back yard. The landlord subsequently made her application for monetary compensation and an order to retain the security deposit.

Landlord's Application

The landlord has claimed \$495.50 for lawn services and \$50.00 for administrative and postage fees. The landlord stated that the tenants had exclusive use of the back yard during their tenancy, and they had the responsibility to maintain the lawn but failed to do so.

The landlord stated that in April 19, 2015 they received an email from the tenants, in which the tenants indicated that the grass in the back yard was beginning to turn brown. The landlord's husband spoke to one tenant on the phone and advised her to use the hose at the side of the house to water the lawn area closest to the lane. The landlord stated that she attended the rental unit on May 2, 2015 and discovered that the grass was dead. The landlord stated that when she emailed the tenants about the lawn, their response was to send the landlord a copy of the watering restrictions bylaw. The landlord asked the tenants to hand-water the dead areas, and the tenants agreed to do their best. The landlord stated that they returned to the rental unit on May 25, 2015, the grass was not cut and parts remained in a brown, dead condition. The landlord's father was present, and he weeded the yard and driveway and cut the lawn. The landlord indicated that the tenant's dog had been urinating on the lawn. The landlord submitted evidence that she had the lawn restored for a cost of \$495.60.

The landlord stated that her father cared for the back yard before the tenancy, and he had probably put fall fertilizer on the lawn. The landlord acknowledged that there was no discussion about having the tenants put fertilizer on in the spring.

The tenants' response to the landlord's claim was that there was no addendum in their tenancy agreement regarding yard work, and the landlord was not clear about the tenants' responsibility for the yard. The tenants pointed out that there was no move-in condition inspection done, and the landlord did not have photographs of the condition of the yard at the beginning of the tenancy. One tenant stated that her dog is a four-and-a-half pound Chihuahua, and the landlord's dogs are quite large; additionally, neighbourhood cats came into the yard.

Tenants' Application

The tenants claimed compensation pursuant to section 51 of the Act. The tenants provided evidence to show that the landlord listed the house for sale just over two weeks after the tenancy ended.

The landlord's reply was that they had given the two-month notice with the intention that the landlord's father would move back into the basement suite. However, the landlord's father's health deteriorated to the point where he could not live independently. The landlord stated that they put the house up for sale for three weeks, but then decided to keep the house. The landlord stated that the house is their secondary residence, that it is in the landlord's possession, and they utilize both floors.

Analysis

Landlord's application

I find that the landlord has failed to provide sufficient evidence to support her claim. The Residential Policy Guidelines indicate that tenants who have exclusive use of a yard are responsible for "routine yard maintenance, which includes cutting grass." The landlord did not specifically outline in writing what her expectations were regarding maintenance of the grass or the back yard in general, and the tenants dispute having any agreement with the landlord on this point. I therefore find that the tenants' responsibilities for the yard fall within the definition set out in the policy guideline. It was not reasonable for the landlord to expect the tenants to hand-water the lawn every day, and particularly not if it violated water restriction guidelines. I find it likely that the lawn looked in poorer, brown condition as a result of hot weather necessitating water restrictions and the fact that the lawn was not fertilized in the spring. I do not accept the landlord's submission as likely that the tenant's small dog independently killed the grass. Finally, the landlord did not do a move-in inspection or provide other evidence of the condition of the lawn at the beginning of the tenancy.

As for the landlord's claim for mailing and administrative costs, the only cost associated with the dispute resolution process that is normally recoverable is the filing fee. As the landlord's application was not successful, she is not entitled to recovery of the filing fee.

Tenants' Application

I find that the tenants' claim for compensation under section 51 cannot succeed. I find that the landlord retained possession of the house, including the basement suite, from the time the tenancy ended to the date of the hearing. The Act does not require that a landlord live in the rental unit as their primary residence, only that they "occupy" the unit, and I accept that in this case, the landlord was already occupying the upstairs portion of the house, and they utilized the basement suite as well after the tenancy moved out.

I therefore dismiss the tenants' application.

Conclusion

The applications of the landlord and the tenants are dismissed.

The tenants are entitled to recovery of their security deposit, and I accordingly grant the tenants an order under section 67 for the amount due of \$550.00. This order may be 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: March 7, 2016

Residential Tenancy Branch