



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, LRE, RR, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order to suspend or set conditions on the landlords' right to enter the rental unit, pursuant to section 70;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The two landlords and their advocate, LM (collectively "landlords") and the two tenants attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlords confirmed that their advocate had authority to make submissions on their behalf at this hearing and provided a written authorization with their written evidence for this hearing. This hearing lasted approximately 67 minutes in order to allow both parties to fully present their submissions.

At the conclusion of the hearing, the landlords exited the call first, in order for me to obtain the tenants' confidential mailing address to mail them a copy of my decision. No testimony was heard and no questions were asked by the tenants during this time.

The landlords confirmed receipt of the tenants' application for dispute resolution hearing package ("Application") and the tenants confirmed receipt of the landlords' written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' Application and the tenants were duly served with the landlords' written evidence package. The landlords confirmed that even though they only received black and white photograph copies from the tenants rather than the colored copies that were served to the Residential Tenancy Branch ("RTB"), as required by the RTB *Rules of Procedure*, they had reviewed the evidence, were ready to proceed with the hearing and asked that I give limited weight to the photographs due to their blurry nature. Accordingly, based on the landlords' consent, I considered the tenants' photographs at the hearing and in my decision.

Issues to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order to suspend or set conditions on the landlords' right to enter the rental unit?

Are the tenants entitled to an order to allow them to reduce rent for repairs, services or facilities agreed upon but not provided?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of the parties and the landlords' advocate, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

The tenants seek a past rent reduction of \$3,704.40 representing three months of rent. The tenants claim that the landlords violated their right to quiet enjoyment at the rental unit. The tenants said that the landlords initially gave them permission to exclusively use a concrete pad, as well as share the use of a pebbled area and the yard. The tenants maintained that two months into their tenancy, the landlords began using the tenants' concrete pad, pushed their plants to the entrance of the rental unit, made complaints in writing to the tenants about their plants, and piled toys all over the yard. The tenants said that their right to use the above areas was restricted by the landlords, despite the tenants advising the landlords about their requirements before the tenancy began and in a verbal agreement made at the beginning of the tenancy. The tenants said that one of the landlords, who shares the same place of employment with one of the tenants, complained about both tenants at her workplace. The tenants said that they live in fear of the landlords and they are vacating the rental unit on June 15, 2016, because of the landlords' behaviour towards them. The tenants confirmed they are not seeking a future rent reduction as their tenancy is ending shortly after this hearing.

The landlords dispute the tenants' claim, saying that there is no agreement for the tenants to use the concrete pad exclusively. They claim that the use of the entire yard is shared, including the concrete pad and the pebbled area. The landlords stated that when the tenants' plants reached 45, they asked them to reduce it to 10 in May 2016, referring also to their text message of November 10, 2014 to the tenants about having only 10 plants, before the tenancy began.

The tenants also seek \$3,000.00 in dog kennel costs and \$1,200.00 for pruning and removing a tree at the rental unit, in addition to the \$100.00 filing fee paid for their Application.

Analysis

As per section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish their claim on a balance of probabilities. In this case, to prove a loss, the tenants must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenants' claim for a past rent reduction for \$3,704.40. I find that the tenants failed to prove that there was an agreement for them to exclusively use the concrete pad at the rental unit. The landlords denied this exclusive agreement, stating the use of the concrete pad was shared, along with the rest of the yard and the pebbled area. Both parties agreed that there was no written agreement for the above areas. Accordingly, I find that the above areas were to be shared by both parties and that the landlords had a right to put toys there and ask the tenants to limit their plants to a reasonable amount, in order to enjoy the shared space. The tenants agreed that the landlords wrote them polite notes and left them on their door in order to communicate their complaints to the tenants. I find that the tenants' allegations about gossip in the workplace are unproven, as one of the tenants overheard a conversation, which is hearsay, and the tenants failed to show a loss. I find that there was no violation of the tenants' right to quiet enjoyment. Therefore, I find that the tenants failed to meet part 2 of the above test to show how the landlords negligently or deliberately violated the *Act*, *Regulation* or tenancy agreement. I further find that the tenants failed to meet part 3 of the above test to substantiate the amount they are seeking, indicating simply that they think three months' rent is a "fair" amount.

I dismiss the tenants' claim of \$3,000.00 for two months of dog kennel costs, without leave to reapply. The landlords dispute this cost. The tenants have not yet incurred this cost, claiming that because they are moving, they will have to place their two dogs in a kennel until they find appropriate housing that allows their dogs. I find that the tenants have failed to meet part 3 of the above test to provide proof of the actual cost. The tenants did not submit any invoices, estimates or other documentary evidence for this cost.

I dismiss the tenants' claim of \$1,200.00 for tree pruning and removal at the rental unit, without leave to reapply. The landlords dispute this cost. I find that the tenants, by their own testimony, undertook this task at their own initiative and made an agreement with the landlords that the landlords did not have to pay for this service. The tenants are only seeking payment from the landlords now because of their ongoing dispute with them.

The tenants did not provide any testimony that the landlords entered their rental unit contrary to section 29 of the *Act* or how they wish to restrict the landlords' right to enter their rental unit. Given the above and the fact that this tenancy is ending shortly on June 15, 2016, I dismiss the tenants' application to restrict the landlords' right to enter the rental unit, without leave to reapply.

As the tenants were unsuccessful in this Application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenants' entire Application is dismissed without leave to reapply.

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: June 10, 2016

Residential Tenancy Branch