Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MND, MNSD, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and an agent for the tenant.

I note the landlords' original Application for Dispute Resolution submitted on January 19, 2017 indicated a monetary claim of $2,500.00. However, on January 31, 2017 the landlord submitted their evidence to the Residential Tenancy Branch that included a Monetary Order Worksheet outlining a total claim of $4,161.35.

At the outset of the hearing I confirmed with both parties that as a result of a previous hearing held on February 6, 2017 the parties had reached a settlement on the issue of possession and rent for the month of February 2017.

As the matter of possession has been settled I find the landlords are not in need of an order of possession and I amend their Application for Dispute Resolution to exclude the matter of possession.

The landlords' Monetary Order Worksheet included a claim in the amount of $1,800.00 for February 2017 rent and $153.35 for the costs of proceeding with this claim including costs for printing and serving documents.

The landlords agreed that since the issue of rent for February 2017 had been settled in the February 6, 2017 hearing they were no longer seeking the rent and they would reduce their claim by $1,800.00.

I advised both parties that the *Residential Tenancy Act (Act)* does not allow for the recovery of costs associated with pursuing a claim against another party with the exception of the filing fee for the Application for Dispute Resolution. As such, I advised both parties I would not hear any testimony in regard to the landlords' claim in the amount of $153.35 for these costs.

As such, I amend the landlords' Application for Dispute Resolution to reduce their total claim from $4,161.35 to $2,208.00.

In addition, I note that since this Application for Dispute Resolution was made prior to the end of the tenancy, I have considered only the rights and obligations of both parties as it relates to the period during the tenancy and not their rights and obligations at the end of the tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled a monetary order for the costs related to cleaning of and/or repairs to the residential property; for other monies owed; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Act.*

Background and Evidence

The landlords submitted into evidence a copy of a tenancy agreement signed by the parties on July 28, 2016 for a month to month tenancy beginning on September 1, 2016 for a monthly rent of $1,800.00 due on the 1st of each month with a security deposit of $900.00 paid.

Clause 3 (b) of the agreement outlines what services and facilities are included with the rent as follows: water; stove and oven; dishwasher; refrigerator; window coverings; parking for 2 vehicles and a washer and dryer. The clause does not include cablevision; internet; or other communication or television service.

The agreement also includes a 1 page addendum with 10 additional terms including these relevant clauses:

- Tenant agrees to keep yards assigned to the rental house in presentable shape including lawns and flower gardens;
- It is agreed also that tenant may keep1 horse in the existing paddock and have use of the riding ring. Tenant is responsible for supplying all feed and feeding regime and cleanup paddock area. No horses permitted on the lawns; and
- Any of the common property shall be kept clean and no debris left laying around. [reproduced as written]

The landlords submitted that just prior to the start of the tenancy the landlord had the paddock professionally cleaned and that since the tenant moved she has failed to maintain the paddock in accordance with the tenancy agreement. The landlords acknowledged that initially the tenant had been keeping clean but then stopped doing so resulting in the paddock now requiring substantial cost to be re-cleaned.

The landlords claim $400.00 plus tax for hog fuel and $ 925.00 plus tax for scraping the paddock. In support of this claim the landlords have submitted photographs showing the condition of the paddock at the start of the tenancy but have not provided any receipts for the work completed prior to the tenancy or estimates for the work required as a result the tenant's failure to clean the paddock.

The tenant, in her written submissions and her agent's verbal submissions does not dispute that the paddock required cleaning. She also submits that the due to recent cold weather and snow she hadn't been able to complete the cleaning. The tenant's written submissions and her agent's verbal submissions provided no response to the amounts claimed by the landlords.

The landlords also submitted that during this same period the tenant's horse caused damage to the fence boards in the paddock. The landlord asserts that the tenant is responsible because: "either due to boredom from lack of attention and exercise or being hungry, her horse went through fence boards by chewing them almost faster than John could replace them." [reproduced as written]

The landlords seek compensation in the amount of $300.00 for the 2 x 6 boards used to replace the fence boards that had been milled from the landlords' own trees. In support the landlords submitted photographs of the condition of the fence boards.

In response, the tenant submitted 3 photographs that show the landlords three horses causing similar damage. In the accompanying written submission the tenant wrote "The areas circled have been exclusively used by their horses, except for once, since the beginning of my tenancy". [reproduced as written]

The landlords submitted, in relation to the provision of satellite television, the parties agreed that the landlords would keep the service in their name and that the tenant's portion would be 1/3. The tenant

submitted that the landlord's daughter advised the tenant by text that the satellite television was included in the rent. The tenant submitted a copy of this text message.

The landlords submitted that due to the female landlord's health she had not taken a bill to the tenant to collect the television charges until December 4, 2016. The landlords stated that the tenant had asked if she could pay the amount on December 15, 2016 and later the landlords received an electronic transfer message from the tenant stating: "First half of January 2017 rent. Second half plus cable will be sent Dec 30, 2016" [reproduced as written].

The landlord included, as evidence, copies of emails between the landlords and the tenant on January 1, 2017 in which the tenant states will not be paying the landlord for television because of the delay in the landlord requesting any payment or providing bills as it was an "inadequate business sense". The tenant also stated in the email because she suspects the landlord of plugging into her hydro that "this on its own grants dismissal of the cable bill".

The landlords submitted that the tenant approached the local Regional District and falsely obtained an extra garbage/recycle bin. The landlords submitted that the tenant identified herself and/or signed the request for the bin as the owner of the property as is the requirement of the District.

The landlords submitted that they will now be required to pay $30.00 per month on an ongoing basis unless they remove one of the kitchens on the property. The landlords seek $15.00 in compensation.

The tenant's written submission is that she had no problem paying the landlord $6.25 for this charge. She stated the male landlord told her to go the Regional District to get the additional bin and that she informed the landlords that there would be an annual charge of $30.00. She testified that she had told them she would have no problem paying the annual charge. However, she states that since she only obtained the bin on November 23, 2016 it would be more appropriate for her to pay only a portion of the charge.

The tenant's written submission did not address the landlords' allegation regarding the tenant signing the Regional District paperwork as the owner of the property. The tenant's agent also did not provide any response regarding this allegation.

The landlords seek compensation in the amount of $24.99 plus tax for the replacement of a broken plastic pitchfork. The landlords assert the tenant misused the fork and should be responsible to replace it. The landlords submitted a photograph of the pitchfork's broken handle and a price tag.

The tenant's written submission included a photograph that she says was taken on December 30, 2016 and that since her daughter has not even attempted to clean up the paddock since December 5, 2016 she should not be held responsible for breaking it.

The tenant also referred to submissions to the previous hearing noted above and provided copies of the statements. However, the tenant has provided no documentary evidence to confirm submission of those documents to the previous hearing.

The landlords seek, also, compensation in the amount of $270.00 for the male landlord's time to scrape the driveway based on a rate of $45.00 per hour for 6 hours. The landlord submitted that the tenant insisted that the driveway be cleaned so she could have her horse removed from the property and she had threatened to hold the landlords accountable for costs that might be associated with an injury to the horse if the road had not been cleaned.

The tenant submitted that under the Residential Tenancy Policy Guidelines it is the landlord's responsibility to ensure snow is shovelled of multi-unit residential complexes. The landlords asserted that their property is not a multi-unit complex. The landlords clarified that the property consists of the house the tenant was living in; the suite above a garage; and the house the landlords live in.

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 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

In relation to the landlords' claim for cleaning of and hog fuel for the paddock, I am satisfied based on the submissions of both parties that for the relevant period of this tenancy the tenant has failed to comply with the requirement in the tenancy agreement addendum to keeping the paddock cleaned. Particularly, the tenant's own submissions in response to this claim acknowledge that the cleaning had not been down.

As a result of this failure to complete this work I find the landlords have established they will suffer a loss. While the landlords have provided no evidence of the actual cost for scraping the paddock and/or hog fuel the tenant did not dispute that amounts claimed by the landlords. As such, I find no reason to consider the landlord's claims in the amounts of $400.00 for hog fuel and $925.00 for scraping the paddock as unreasonable.

In regard to the landlords' claim for repairs to the fencing around the paddocks, in consideration of the tenant's submission that the landlords' horses have caused similar damage to the paddock fence I find the landlords have failed to provide sufficient evidence to establish that this kind of wear and tear is anything more than normal when keeping horses.

Specifically, the landlords assert the tenant is responsible for this damage because of the tenant's neglect of her horse in terms of attention, exercise, and feeding. However, the landlords have provided no evidence to confirm that these issues cause horses to behave in such a manner or that that tenant had neglected her horse to this degree.

As such, I find the landlords have failed to establish the tenant is responsible for the replacement of paddock fence boarding and I dismiss this portion of the landlords' claim.

Despite the tenant's assertion that the landlords' daughter advised her that television service was included in the rent, I find the tenancy agreement specifically excludes the provision of cablevision. As such, I find the tenant agreed in writing that television was not included and as a result the tenant is either responsible for the total cost of the provision of satellite television or the parties entered into a sharing arrangement with the landlord's, the other tenant on the residential property and this tenant shared the costs.

I find, on a balance of probabilities, that the landlord would not expect the tenant to pay the full cost of television for them and their other tenant. Rather, I find it more likely that the parties agreed to a specific portion to share. A cost of 1/3 seems to be a reasonable amount for parties to agree to when there were three parties receiving the service.

In addition, I find the e-transfer confirmation where the tenant states that the cable portion will be sent on December 30, 2016 is very compelling evidence that the tenant not only had agreed to the sharing arrangement but also the payment of the outstanding amount.

Furthermore, I find that nowhere in the tenant's email of January 1, 2017 does the tenant actually state that she had not agreed to pay 1/3 of the charge but only that she is now not going to pay it because the landlord had not brought her a bill for several months and the tenant believed the landlords were the cause of her high hydro bills. I also find it compelling that the tenant wrote this refusal email 3 days after the date the landlord issued the 1 Month Notice to End Tenancy.

I find the landlords are entitled to the full amount of the claim for the provision of satellite television in the amount of $273.00. The landlords have provided sufficient evidence to establish the quantum by way of the bill from their service provider.

To the landlords' claim for garbage/recycling bin charges in the amount of $15.00 I am satisfied by the submissions of both parties that the tenant is responsible for charges related to the bin. As to the amount, I find the landlords' claim of $15.00 to be reasonable.

I am not persuaded by the submissions of the tenant that she should only be held responsible for $6.25. I find that the landlords' evidence supports their assertion that the tenant obtained the bin fraudulently and that until the landlords are allowed to or chose to cancel the additional bin the tenant could be held responsible for current and future charges. As the landlords seek only $15.00 as full compensation for this loss I find it a reasonable amount and I find in the landlords' favour.

I am satisfied the landlords have established entitlement to recover the cost of the plastic pitchfork. I make this finding, in part, because the tenant's submissions on this issue are vague and not on point. By way of an example, the tenant suggests that the pitchfork could not have been damaged by them because her daughter had not used it for cleaning the paddock. However, this provides no evidence that can refute the landlords' claim that the damage was caused by the tenant.

I am satisfied that the pitchfork was damaged while in possession of the tenant during the tenancy. As a result, I find the landlord is entitled to recover the cost in the amount of $24.99.

I dismiss landlord's claims for taxes on the hog fuel; scraping paddock; and plastic pitchfork claims as they have failed to provide any amount or specificity of what taxes they were claiming.

On the subject of property maintenance Residential Tenancy Policy Guideline 1 stipulates that the landlord is responsible for cutting grass, shovelling snow and weeding flower beds and gardens of multi-unit residential complexes and common areas of manufactured home parks.

Despite the landlords' position that they are not a multi-unit complex, I find that they are. The landlords' testimony confirmed that there are 3 residences on the landlord's property two of which are rental units. The landlords also confirmed that there is one driveway that passes first by the tenant's unit; then by the next tenant and ending at the landlord's residence.

I find that a "multi-unit complex" means a property owned by a landlord that has more than one residential unit. As such, I find these landlords have a multi-unit complex and are required to ensure the driveway is cleared of snow and is safe to use.

While I accept that the landlords completed the driveway cleaning specifically because of the tenant was removing her horse and her demands related to that I still find that the obligation rested with the landlords regardless and they cannot hold the tenant responsible for the charges to do so. I dismiss the portion of the landlords' claim for the landlord cleaning the driveway.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **$1,687.99** comprised of $1,637.99 compensation as explained above and $50.00 of the $100.00 fee paid by the landlords for this application, as they were only partially successful in their claim.

I order the landlord may deduct the security deposit and interest held in the amount of $900.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **$787.99**. This order must be served on the tenant. If the tenant fails to comply with this order the landlords 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: February 24, 2017

Residential Tenancy Branch