Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, MNDC, FF

Introduction

This is an application by the landlord under the *Residential Tenancy Act* (the "Act") filed February 2, 2017. The landlord originally sought an order of possession for landlord use but withdrew that request at the hearing because the tenant had vacated the rental unit. The landlord also applied for a monetary order for compensation for damage or loss under the Act, Regulation, or tenancy agreement and for recovery of the application filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, to make submissions, and to respond to the other party.

The tenant acknowledged receipt of the landlord's application and supporting materials. The tenant has also applied for a monetary order. Although the tenant's application was not before me, she had included a copy of her application and supporting materials. She had not served these on the landlord as of the date of this hearing, however, and they were not considered.

Issues to be Decided

Is the landlord entitled to a monetary order?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

There was no written tenancy agreement in evidence. The landlord advised that a written agreement does exist and that it is on the standard Residential Tenancy Branch form. It was agreed that this was a month to month tenancy that began in August of

2016. Monthly rent of $900.00 was due on the first day of each month. The tenant did not pay a security or pet damage deposit.

The landlord testified that the tenant hired someone to plow snow from the driveway of the rental unit without consulting the landlord in advance. As a result, another tenant who was looking after the landlord's chickens in his absence and who was also not consulted or given notice of the snow plowing was unable to remove an extension cord that was lying across the driveway and serving as the power source to the chicken coop. The cord was damaged by the plow. The landlord submitted an advertisement for a similar cord with a value of $142.60 including tax.

The landlord stated that the driveway was also damaged by the plow. He testified that the driveway is 300 meters long and that approximately 10 yards of gravel was displaced along the length of the driveway. He testified that removal of the gravel from the grass along the driveway would be more costly and complicated than simply replacing the driveway. The landlord provided an estimate from a gravel company in the amount of $277.20 for the delivery and deposit of 10 yards of gravel, inclusive of taxes.

In support of his claim the landlord provided a statement from a third party stating that he had witnessed the displacement of a large amount of gravel from the length of the driveway and confirming that the extension cord was in fact damaged by the tractor plow.

The landlord's position is that the tenant should be responsible for these costs because the tractor plow driver performed the work on the tenant's instructions.

The tenant acknowledged having arranged to have the driveway plowed. The landlord was away for approximately one month and the tenant alleged that he had not left contact information with the result that she was required to deal with the snow herself. The landlord said that the tenant had his text contact and that she had texted him about other things while he was away. The tenant said that she had texted him about other things and he was not responsive and so she did not think he would be responsive about the driveway.

The tenant testified that she arranged for the plowing because she was unable to remove her car and she needed to drive her son to school. The landlord said that the amount of snow did not necessitate a plow. The tenant's responded that the other tenants in the area had 4 x 4 vehicles but she did not. She said she would not have arranged for the plow, which she paid for herself, if it hadn't been necessary.

Analysis

Sections 7 and 67 of the Act provide that a tenant who does not comply with the Act, Regulation or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Section 32(3) provides that a tenant must repair damage to the rental unit or common areas caused by the tenant's actions or neglect, or caused by the actions or neglect of a person permitted on the residential property by the tenant. The Act defines "common area" as any part of the residential property that is shared by the tenant and the landlord or other tenants. I am satisfied that the gravel driveway is part of the "common area." This is consistent with the Residential Tenancy Branch's Policy Guideline #40, which includes driveways as assets for which compensation may be claimed. I am also satisfied that the landlord can be compensated for the power cord based on its location in the common area.

I am also satisfied that the tenant invited the tractor driver onto the property and I accept that the driveway and power cord were damaged. The landlord's testimony to this effect was supported by a signed letter from a third party witness. Accordingly, I find that the tenant has breached her obligation under s. 32(3) to repair damage caused by her actions and must compensate the landlord for the cost of replacing the gravel and the power cord. I decline to discount the cost of replacement based on the useful life Policy Guideline #40 because I accept the landlord's evidence that the gravel was displaced all at once and because a power cord has a very long useful life which is unlikely to have been exhausted in the circumstances.

The landlord is responsible for snow removal and other property maintenance as set out in Policy Guideline #1. However, the tenant must first ask the landlord to address any property maintenance issues for which the landlord is responsible. A tenant can arrange for work to be done only after the landlord has failed to meet the tenant's reasonable requests in a timely fashion. A tenant who follows these procedures may be entitled to claim the cost of the work from the landlord. Here, the tenant had the landlord's contact information but did not text him about the snow removal.

As the landlord was successful in this application, I find that the landlord is entitled to recover the $100.00 filing fee.

Conclusion

The landlord's application is allowed.

I issue a monetary order in the landlord's favour and against the tenant in the amount of $519.80 (the replacement cost of the gravel and the power cord, plus the $100.00 filing fee). The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The tenant has advised that she will be bringing her own application for damages caused by the landlord's failure to comply with the Act, Regulation, or tenancy agreement. If the tenant is successful in her own application, the amounts owing by each party to the other may be set off against one another. However, that is a matter to be worked out between the parties.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 10, 2017

Residential Tenancy Branch