



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF, CNC, MNDC, MNSD, FF

Introduction

This hearing was scheduled to consider the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*").

The tenants seek:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended this hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant GG confirmed she represented both co-tenants at the hearing (the "tenant"). The landlord, GD primarily spoke for the landlords (the "landlord") with the landlord RD providing additional testimony.

The tenant testified that the tenants' application for dispute resolution was served on the landlords on February 3, 2017 by posting on the landlords' door. The landlords disputed that the tenants' application was properly served, testifying that they discovered the documents being chewed up by their dogs on their property. The landlords eventually confirmed that they have received the tenants' application and are aware of the tenants' claims. Pursuant to section 71(c) of the *Act*, I find that the landlords were sufficiently served with the tenants' application for dispute resolution.

The tenant confirmed receipt of the landlords' written evidence packages. I find that the evidentiary packages were duly served by the landlords on the tenants in accordance

with section 88 of the Act. The tenant testified that the tenants have not provided written evidentiary materials.

Preliminary Issue-Other Hearing

A separate hearing under the file number referenced on the cover page was scheduled to hear the landlords' applications. While I attempted to join the matters and hear both applications, the parties attended the other hearing on March 8, 2017 and reached an agreement to end the tenancy. Therefore, I find it unnecessary to issue a decision on the cancellation of the 1 Month Notice as another arbitrator has issued a final and binding decision with respect to that matter.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for damages or loss?

Are the tenants entitled to a monetary award for the return of a portion or all of the pet damage and security deposits?

Are the tenants entitled to recover the cost of the filing fees for this application from the landlords?

Background and Evidence

The parties agreed on the following facts. This tenancy began in August, 2013. The current monthly rent is \$1,363.42 payable on the first of each month. A security deposit of \$650.00 and a pet damage deposit of \$50.00 were paid at the start of the tenancy and are still held by the landlords.

The tenant testified that a portion of the monthly rent was a surcharge for having a pet and should be returned. The tenant said that a surcharge of \$25.00 has been charged throughout the tenancy for a total of \$1,025.00.

The tenant testified that the landlords have been drawing power from the tenants' electricity during the tenancy. The tenant said that the landlords have been powering their barn using the tenants' account and the landlords should compensate the tenants for their past use of power. The tenant said that the landlords should be charged a quarter of the past electricity bill which totals \$2,342.00.

The landlords dispute the tenants' claims. The landlord testified that there has never been a monthly surcharge for the tenants' pets. The landlord said that a pet damage

deposit was paid at the start of the tenancy and no other monies were ever collected for the tenants' pets.

The landlord testified that the tenants have always been aware that the barn is powered by electricity from the rental unit. The breaker box controlling the power to the barn is located in the rental unit and the tenants could have cut the power if they chose to do so. The landlord testified that in any event the barn uses minimal electricity if any, and a claim for a quarter of the total power is unreasonable.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

I find, on a balance of probabilities, that the tenants have not established that they suffered damage or loss as a result of the landlord's violation of the tenancy agreement. The tenants claim that the landlords have charged an extra \$25.00 monthly amount for having pets on the rental unit. However, the tenants have provided no receipts showing this extra payment, no cheques, bank statements or written correspondence with the landlords regarding this payment. I find that the tenants have not shown on a balance that they paid an extra \$25.00 to the landlords for having pets.

The tenants request a payment of \$2,342.00 which they say represents a quarter of the total electricity bill for the duration of the tenancy. However, the tenants provided no written evidence of the full amount of the electric bill, provided no explanation of why they believe 25% of the power is directed to the landlords' use of the barn, and no written evidence to show that this arrangement is contrary to the terms of the tenancy agreement. I find that the tenants have not established that they suffered any loss as a result of the landlords' actions. Accordingly, I dismiss the tenants' application for a monetary award.

I find that it is premature to make a finding regarding the security deposit as the tenancy has not yet ended. I dismiss this portion of the tenants' application with leave to reapply once the tenancy has been ended in accordance with the *Act*.

As I have dismissed the tenants' application, I find that the tenants are not entitled to recover the filing fees for this application.

Conclusion

The tenants' application for a monetary award is dismissed.

The tenants' application for return of the security and pet damage deposits is dismissed with leave to reapply after the tenancy has been ended in accordance with the *Act*.

Since the tenants' application to cancel the 1 Month Notice has already been addressed in another final and binding decision of another arbitrator, I make no finding with respect to that aspect of the tenants' initial application.

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 13, 2017

Residential Tenancy Branch