



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OPR, MNR, MNDC, MNSD, FF

Introduction

This hearing was reconvened after an adjournment from the original hearing on October 12, 2017. The following sets out the remaining claims of the Parties for this reconvened hearing:

For the Tenant:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

For the Landlord:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy of an upper unit in a house started in 2014. Prior to this date Tenant DH was renting a unit in the lower part of the house. The tenancy of the upper unit ended on September 30, 2017 as a result of the Landlord ending the tenancy for that date with

a two month notice to end tenancy for landlord's use of property (the "Notice"). Rent of \$1,800.00 was payable on the first day of each month during the tenancy.

The Landlord states that for the original tenancy in the lower unit Tenant DH had paid \$400.00 as a security deposit and that this amount was carried over to the upper unit tenancy. The Landlord also states that \$500.00 was collected and carried over for the security deposit. The Landlord states that no additional security deposit was collected for the upper unit. Tenant DH states that the original security paid was either \$400.00 or \$500.00 and was carried over to the upper tenancy. Tenant DH states that an additional \$400.00 was paid as a security deposit to the Landlord and that the Landlord gave the Tenants a receipt for this amount. The Tenant states that this receipt was not provided as there was no indication that the security deposit was an issue.

The Landlord states that the Tenants failed to pay rent for August 2017 and only paid \$900.00 for September 2017 rent. The Landlord states that they did not pay the Tenants the one month's compensation for having ended the tenancy with the Notice. The Landlord claims \$1,800.00 for August 2017 rent and \$900.00 for September 2017 rent.

The Tenants state that they paid \$900.00 for August 2017 rent and the Tenants understood that the Landlord was keeping the \$900.00 security deposit for the other half of the rent. The Tenants state that no rent was paid for September 2017 in lieu of the one month rent equivalent owed to the Tenants from the Landlord's Notice.

Tenant DH states that a written tenancy agreement was signed for the upper unit but a copy was not provided as evidence for this hearing as Tenant DH could not locate the agreement. Tenant DH states that there was a written tenancy agreement for the lower unit as well. The Landlord states no written tenancy agreement was signed for the upper unit. The Landlord states that they have never had a written lease with Tenant DH.

Tenant DH states that when the upper unit was taken over Tenant DH and the Landlord discussed the length of the tenancy and the Landlord told Tenant DH not to worry about the tenancy being ended by the Landlord before 5 years. Tenant DH states that given this agreement Tenant DH requested and the Landlord agreed that Tenant DH could make renovations to the kitchen, including painting the walls and replacing the counters, and that the Landlord would pay for the supplies. Tenant DH states that she would not have undertaken renovations without the Landlord's assurances of a long term tenancy. Tenant DH argues that since the Landlord breached the agreement for a long term tenancy the Tenants are entitled to compensation for the renovations that would not otherwise have been done. The Tenant provides photos of the renovations. The Tenants claims \$4,032.00 for 96 hours of work on the kitchen at \$40.00 per hour plus .05% GST.

The Landlord states that there was never any discussion whatsoever about a long term tenancy. The Landlord states that at move-in Tenant DH did not like the kitchen paint and wanted it changed. The Landlord states that he told Tenant DH the Landlord would not agree to paint the kitchen so Tenant DH asked if she could paint the kitchen and the Landlord agreed to this and to supply the paint. The Landlord states that Tenant DH then asked to change the countertops and the Landlord agreed that Tenant DH could do the work and the Landlord would supply the materials. The Landlord states that the supplies were paid for by the Landlord.

Tenant FW states that about 2 weeks after his move into the unit the Landlord had a discussion with Tenant FW in the Tenants' garage. Tenant FW states that during this discussion the Landlord shared his appreciation of Tenant DH's long term tenancy in the house and the work on the garden and kitchen. Tenant FW states that the Landlord informed Tenant FW that the Tenants were safe to stay in the unit at least until Tenant DH's daughter finished high school in approximately 5 years. Tenant FW states that it was because of the animosity that arose between the Landlord and the Tenants in

relation to repairs to the deck that the Landlord ended the tenancy. Tenant FW states that he paid a \$425.00 to the Landlord at move-in and that the Tenants did not ask for its return as they assumed it was kept towards the rent for August 2017. The Landlord states that no security deposit was collected from Tenant FW. Tenant FW states that he paid the security deposit to the Landlord at the same time as the Landlord had Tenant FW fill out a form with his information including the requirement that he provide his social insurance number. Tenant FW specifically asks the Landlord about his recall of this form. The Landlord states that he never spoke to Tenant FW in the garage, that he never spoke to Tenant FW about the Tenant and her daughter and that he only met Tenant FW at his move-in.

Tenant DH states that in July 2017 the Landlord trimmed the branches and plants around the pond where the Tenants kept koi fish and that the Landlord allowed the plant debris to fall into the pond killing the fish. The Tenant states that the day after this work the Tenant discovered the dead fish. The Tenant states that the fish were not replaced. The Tenant states that she had originally purchased 10 fish for an unknown amount but that 5 did not survive the winter. The Tenants claim \$208.00. The Tenants provide no receipts or invoices or estimates for the costs claimed.

Tenant DH states that the plant debris left by the Landlord in the pond created murkiness in the water and as a result the Tenant could not see the fish. The Tenant states that in clearing out the pond the Tenant had to remove pond plants for which that the Tenant had originally paid at least \$100.00. The Tenant states that the pond plants were not replaced as shortly thereafter they received the Notice. Tenant FW states that the Landlord was always reckless when doing the yard work and would just cut down everything including the European wildflowers that Tenant DH had planted. Tenant FW states that when he saw the Landlord cutting down the plants he had to tell the Landlord to stop. The Tenants claim \$100.00 for the loss of the pond plants. The Landlord agrees that the plants around the pond were trimmed by the Landlord. The Landlord states that only a bit of plant debris fell into the pond. The Landlord states that

he only trimmed branches, that when he mowed the lawn he did not touch other plants and that the Tenant had all her plants in pots.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Section 51 of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement and that this tenant may withhold the last month's rent and that amount is deemed to have been paid to the landlord. It is undisputed that for August and September 2017 the Tenants only paid \$900.00 in rent. It is undisputed that the Landlord did not pay the Tenants the required amount of the equivalent of one month's rent or \$1,800.00 as compensation for ending the tenancy with the Notice as required by the Act. As a result I find that the Landlord is only entitled to **\$900.00** for one of those months.

Both Tenant DH and the Landlord gave contradictory evidence of the original amount of the security deposit paid being either \$400.00 or \$500.00 and of the provision of a written tenancy agreement. As it is the Landlord's requirement to provide a written tenancy agreement and as the Landlord carries the burden of proof in relation to the monetary amounts being claimed by the Landlord, I find that the Landlord collected \$500.00 at the outset of the lower unit tenancy that was carried over to the upper tenancy. The Landlord denied all interactions with Tenant FW. On the other hand Tenant FW gave detailed and precise evidence of interactions with the Landlord that I consider to be credible. I therefore prefer Tenant FW's evidence and accept that the Landlord collected an additional security deposit from Tenant FW in the amount of \$425.00. I find therefore that the Landlord holds **\$925.00** as a security deposit. As the Landlord holds more in the security deposit than the Tenants owe for rent I decline to award the Landlord with recovery of the filing fee. Deducting the rent owed to the

Landlord from the Tenant's security deposit of \$950.00 plus zero interest leaves **\$25.00** to be returned to the Tenants.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the Landlord's evidence of no tenancy agreement contrary to its obligations to provide a written tenancy agreement, I accept the Landlord's evidence and find that only an oral agreement existed for the upper unit. Given Tenant FW's detailed evidence of the discussion with the Landlord in the garage that I consider to be more credible than the Landlord's flat out denial of any interaction with this Tenant, I accept that the Landlord intended to provide Tenant DH with a long term tenancy. This intention supports Tenant DH's evidence that the Landlord orally agreed to a long term tenancy of at least 5 years and that the Tenant relied on this agreement to undertake renovations for no labour cost to the Landlord. As the Landlord ended the tenancy about midway through the expected 5 years of enjoyment of the renovated unit I find that the Tenant lost half of the use of the fruits of its labour and that the Landlord was unjustly enriched by the same amount. Noting that the Landlord did not provide any evidence to dispute the total amount claimed by the Tenant and for the above reasons, I find that the Tenants have substantiated an entitlement to half the amount claimed of **\$1,920.00** (96 hours x \$40.00 per hour/2). I decline to award any amount for GST as there is no evidence that the Tenant actually incurred this cost.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. Given the lack of any receipts or estimates and considering that the Tenant did not replace the fish or the pond plants I find that the Tenant has not substantiated the costs claimed for these items and I dismiss these claims. As the Tenants' application has had merit I find that the Tenants are entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,045.00 (\$25.00 + 1,920.00 + 100.00)**.

Conclusion

I Order the Landlord to retain \$900.00 from the security deposit plus interest of \$925.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$2,045.00**. If necessary, 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 Act.

Dated: December 22, 2017

Residential Tenancy Branch