



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL, MNRL, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Residential Tenancy Act* (the “Act”) for compensation for damages, compensation for unpaid rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

The hearing was originally scheduled for August 22, 2019 and was adjourned to be reconvened on October 21, 2019. This decision should be read in conjunction with the interim decision dated August 22, 2019.

An agent for the Landlord (the “Landlord”) was present for the reconvened hearing date, while the Tenant called in approximately 20 minutes into the hearing as he stated he had initially used the incorrect call-in code. The Tenant confirmed receipt of a copy of the Landlord’s evidence which the Landlord stated was served by registered mail. Neither party submitted any additional evidence from what was submitted for the initial hearing.

The parties were affirmed to be truthful in their testimony. As the Landlord had presented her initial testimony and evidence prior to the Tenant joining the hearing, the Tenant was not present for some of the testimony. However, after the Tenant joined, the Tenant was provided the opportunity to present his own testimony and evidence and for both parties to respond to each other and ask questions.

Issues to be Decided

Is the Landlord entitled to compensation for damages?

Is the Landlord entitled to compensation for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy which were confirmed by the tenancy agreement submitted into evidence. The tenancy agreement states a tenancy start date of February 1, 2019 but the parties agreed that the Tenant moved in for January 10, 2019. Rent in the amount of \$3,800.00 was due on the first day of each month and a security deposit of \$1,900.00 was paid at the start of the tenancy. The tenancy ended on April 30, 2019.

Regarding the security deposit, both parties testified that the Tenant provided permission to the Landlord to retain the deposit due to ending the fixed term tenancy early. Therefore, the Landlord confirmed that they did not apply to retain the security deposit on the Application for Dispute Resolution.

The Landlord has applied for compensation in the amount of \$5,300.00 which includes a claim for lawn repair and a claim for unpaid rent.

The Landlord is seeking \$1,500.00 to repair the grass in the front yard of the residential property. She provided testimony that during the tenancy the Tenant removed the grass and replaced it with gravel. She stated that \$1,500.00 was the amount paid to remove the gravel and put the grass back into the yard. She stated that the grass was in good condition when the Tenant moved in.

The Landlord stated that the Tenant had agreed to take care of the yard but did not inform her that he would be removing the grass and replacing with gravel.

The Landlord confirmed that while \$1,500.00 was paid to fix the grass, that the invoice had not been submitted into evidence. Included in the Landlord's evidence were 5 photos of the yard and one short video clip, as well as a text message exchange with

the Tenant dated April 30, 2019. In the text messages, the Tenant writes that the grass was ruined from crows and racoons and the Landlord requests that the grass be replaced.

The Tenant testified that the whole yard was ruined when he moved in due to damage from animals. The Tenant stated that although he had agreed to take care of the yard this did not include major yard work. He noted that the work that was needed to fix the lawn was beyond regular maintenance due to the damage present. The Tenant disputed that he owed any money for the yard repair due to the pre-existing damage.

The Landlord is also claiming \$3,800.00 as unpaid rent for April 2019. She stated that the Tenant did not provide notice in writing that he was moving out. The Landlord testified that the Tenant provided a cheque for April 2019 rent in the amount of \$3,800.00 but that the cheque was returned from the bank. The Landlord submitted a copy of the returned cheque from the bank which notes that it was returned on April 4, 2019 due to a stop payment.

The Tenant testified that there were numerous issues with the house including sporadic heat and hot water throughout the tenancy. He also noted issues with ants in the home and provided evidence regarding both issues. The Tenant stated that he could not live there anymore and needed to end the tenancy prior to the end of the fixed term. He stated that he should not have to pay for the months when there was no heat or hot water and the rental unit was therefore not liveable.

The parties were in agreement that no move-in or move-out inspection was completed in writing.

In the Tenant's evidence he submitted information regarding his own monetary claims but did not file an Application for Dispute Resolution. However, the parties were informed that the hearing and resulting decision would be regarding the claims on the Landlord's application only. Both parties are at liberty to file a new application should there be any remaining claims regarding this tenancy.

Analysis

Regarding the Landlord's claim for compensation for yard repair, I refer to *Residential Tenancy Policy Guideline 16: Compensation for Damage or Loss* which outlines a four-part test for determining if compensation is due as follows:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I also note that as stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim. Therefore, in this matter the Landlord has the burden of proof.

As stated in Section 37 of the *Act*, a tenant must leave a rental unit reasonably clean and undamaged at the end of the tenancy. Regarding the lawn, the parties were not in agreement as to what happened. However, in the absence of a Condition Inspection Report at move-in and move-out as required by Sections 23 and 35 of the *Act*, I find that the Landlord did not establish that the lawn was damaged by the Tenant and that the cost of repairs should be his responsibility.

Condition Inspection Reports are conducted to establish the condition of the rental unit at the start and end of the tenancy so that damage to the rental unit during the tenancy can better be determined. In the absence of this report, I find that it is possible that the lawn was damaged at the start of the tenancy as testified to by the Tenant. As such, I am not satisfied that the Tenant breached the *Act* regarding the damage to the lawn.

I also note that the four-part test as outlined above requires the party claiming a loss to prove the value of their loss. In the absence of an invoice for the work completed, I do not find that the Landlord has met the burden of proof to establish that the repairs cost \$1,500.00. Therefore, I do not find that the Landlord has met the four-part test and as such, I decline to award any compensation for the yard repair. This claim is dismissed, without leave to reapply.

Regarding the Landlord's claim for unpaid rent, I refer to Section 26(1) of the *Act* which states the following:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The parties were in agreement that rent in the amount of \$3,800.00 was due on the first day of each month and I find that this is confirmed by the tenancy agreement. I also accept the evidence before me of the stop payment cheque dated April 1, 2019 and with this, along with the Tenant's testimony, find that the Tenant did not pay rent as due on April 1, 2019.

While the Tenant provided testimony and evidence regarding ongoing issues in the rental unit, including issues with ants and with the heat and hot water in the unit, I do not find any provision under the *Act* that would allow the Tenant to withhold rent for these reasons. Instead, I find that rent was due on the first day of each month throughout the tenancy and as the parties agreed that the tenancy ended on April 30, 2019, the Tenant owed rent for the month of April 2019 in the amount of \$3,800.00. Therefore, I award the Landlord \$3,800.00 as claimed for April 2019 rent.

As stated above, I also decline to make any findings regarding the Tenant's monetary claims as indicated in his evidence. As stated by rule 6.2 of the *Residential Tenancy Branch Rules of Procedure*, the hearing is limited to the claims on the Application for Dispute Resolution and I do not find evidence before me that the Tenant filed his own application to be joined with the Landlord's.

As the Landlord was successful with the application, pursuant to Section 72 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord is granted a Monetary Order in the amount of \$3,900.00.

Conclusion

Pursuant to Sections 67 and 72 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$3,900.00** for rent owed for April 2019 and for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is provided with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Residential Tenancy Act*.

Dated: October 23, 2019

Residential Tenancy Branch