



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act*. ("the Act").

On August 10, 2020, the Landlord submitted an Application requesting a monetary order for damage to the rental unit; to keep the security deposit; and to recover the cost of the filing fee. On August 19, 2020 the Landlord amended their claim by increasing the amount of compensation being sought.

On October 28, 2020, the Tenants submitted an Application for the return of a security deposit and or pet damage deposit; and for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement.

These matters were set for a conference call hearing. The Landlord and Tenants attended the teleconference hearing on November 30, 2020.

The hearing on November 30, 2019 continued for 81 minutes which was insufficient time for the parties to provide their testimony. The hearing was adjourned and was rescheduled. The parties were sent a new Notice of Dispute Resolution Proceeding which contained the date and time of the next hearing and provided the phone number and new access code to call into the February 16, 2021 hearing.

The Interim Decision sent to the parties cautioned them that failure to attend the hearing may result in the hearing proceeding in their absence, or their application being dismissed.

The Tenants attended the February 16, 2021 hearing; however, the Landlord did not. The line remained open while the phone system was monitored for twenty minutes and the Landlord did not call into the hearing during this time.

Since the Landlord did not attend the hearing to pursue their claims; and since the Tenants were present and ready to proceed, I dismiss the Landlords application in its entirety without leave to reapply.

The hearing proceeded on the Tenants' application for the return of a security deposit and for money owed or compensation for damage or loss under the Act.

At the start of the hearing I introduced myself. The Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. At the first hearing, the parties testified that they had exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants' entitled to the return of a security deposit
- Are the Tenants entitled to money owed or compensation for damage or loss under the Act?

Background and Evidence

The parties testified that the tenancy began May 1, 2019 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,250.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$1,125.00. The parties testified that the tenancy ended on July 31, 2020 when the Tenants moved out of the rental unit. The Tenants provided a copy of the tenancy agreement.

Tenants' Application

Flower Bed Costs

The Tenants testified that a flower bed on the property was falling apart and the Landlord's agent authorized them to repair the flower bed and that they would be

reimbursed for their costs. The Tenants provided a copy of a text message from the Landlords agent authorizing the purchase. The Tenants provided a copy of receipts for the repair in the amount of \$97.27.

Loss of Use / Reduction of Value of the Rental Property

The Tenants testified that there are two rental units situated on the residential property that are equal in square footage. The Tenants rented the upper rental unit and the rent of \$2,250.00 included exclusive use of a swimming pool. The Tenants testified that the lower rental unit is newer but does not include any use of the pool. The Tenants testified that monthly rent for the lower rental unit was \$1,400.00 each month.

The Tenants testified that there was a dispute with the Landlord over the maintenance of the pool. The Tenants testified that the Landlord locked them out from using the pool at the start of June 2020. The Tenants testified that they were forced to ask permission from the Landlord to use the pool on July 18, 2020, which was granted for the day. The Tenants testified that other than this one day in July, they were not permitted to access/ use the pool for the months of June and July: the last two months of their tenancy.

The Tenants testified that the rent due under the tenancy agreement was fully paid each month and while they asked the Landlord for rent reduction, they received no reduction in rent for the loss of use of the pool. The Tenants provided a copy of a text message sent to the Landlord where they asked for a reduction in rent due to loss of use of the pool.

The Tenants explained that they are seeking \$850.00 in compensation because the only difference between the upper and lower rental units is the exclusive use of the pool, and the difference in monthly rent is \$850.00. The Tenants submitted that exclusive use of the pool is therefore valued at \$850.00 each month.

Security Deposit

The Tenants are seeking the return of the \$1,125.00 security deposit. The Tenants testified that they provided the Landlord with their forwarding address in writing on July 31, 2020.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists.
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement.
3. Proof of the actual amount required to compensate for the claimed loss and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- ***Loss of access to any part of the residential property provided under a tenancy agreement.***
- ***Loss of a service or facility provided under a tenancy agreement.***
- *Loss of quiet enjoyment.*
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

[my emphasis]

Section 67 of the Act provides that without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the evidence before me, the testimony of the Tenants, and on a balance of probabilities, I make the following findings:

Flower Bed Costs

I find that the Tenants had authorization from the Landlord to repair the flower bed and be reimbursed for the cost. I accept the Tenants' claim for compensation in the amount of \$97.27.

Loss of Use of the Pool

I accept the Tenants' testimony that the monthly rent includes exclusive use of a swimming pool. I accept the Tenants' testimony the Landlord restricted their use of the pool for the last two months of the tenancy. I accept that the rent was paid in full, and the Landlord did not reduce the rent. I find that the Tenants suffered a loss of value in the tenancy.

I have considered the amount of the Tenants' claim. I am mindful that the rent paid each month includes fall and winter months where the pool was not in use. The summertime where the Tenants would enjoy full use of the pool was restricted by the Landlord. I find that the amount claimed of \$850.00 is reasonable given the above factors and the loss of use of the pool for almost two months.

I award the Tenants the amount of \$850.00 for loss of use of the pool.

Security Deposit

I find that the Landlords made a claim against the security deposit within 15 days of receiving the Tenants' forwarding address in writing. However, since the Landlords failed to attend the second hearing, I dismiss the Landlords claim to keep the security deposit towards their claims.

I grant the Tenants their request for the return of the \$1,125.00 security deposit.

Section 72 of the Act also gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were successful with their claims, I order the Landlords to repay the \$100.00 filing fee to the Tenants.

I grant the Tenants a monetary order in the amount of \$2,172.27. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenants are successful with their claim to be compensated for a loss of value in the tenancy and for the return of a security deposit.

I grant the Tenants a monetary order in the amount of \$2,172.27

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, 2021

Residential Tenancy Branch