



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FFT, MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 27, 2021 (the "Application"). The Tenant also amended her Application on August 20, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- to cancel a One Month Notice to End Tenancy dated July 20, 2021 ("the One Month Notice");
- a monetary order for damage or compensation; and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Counsel C.F. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application, Amendment, and documentary evidence packages. I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

At the start of the hearing, the parties agreed that the tenancy ended at the end of August 2021. As such, I find the Tenant's Application to cancel the One Month Notice is now moot, therefore, dismissed without leave to reapply. The hearing continued based on the Tenant's amended monetary claims.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on September 26, 2020. Rent in the amount of \$1,750.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$500.00 and a pet damage deposit in the amount of \$375.00, both of which have since been returned to the Tenant. The tenancy ended at the end of August 2021. A copy of the tenancy agreement was submitted in support.

The Tenant is claiming for monetary compensation in relation to repairing a faulty irrigation system at the rental property as well as for the cost of maintaining a portion of the garden which was overgrown with weeds. The Tenant provided two invoices and pictures in support of the claims. The irrigation repairs amounted to \$485.10, and the Landscaping amounted to \$388.50.

The Tenant stated that she had communicated her concerns to the Landlord about the irrigation system not working, which was likely to result in the loss of her gardens and lawn. The Tenant stated that she texted the Landlord on several occasions, however, the Landlord did not seem interested in repairing the irrigation system. The Tenant referred to texts that she had provided to the Landlord and to the RTB.

The Landlord's Counsel responded by stating that the Tenant did not inform the Landlord of the need to repair the irrigation system, nor that the Tenant intended on having work completed in the garden. The Landlord's Counsel stated that the Landlord was unaware of the claims until she received the Tenant's Application to recover the costs.

Furthermore, the Landlord's Counsel stated that the Tenant did not serve the Landlord with a copy of the texts which the Tenant stated was her communication to the Landlord

regarding the need for repairs. I note that no such texts were located in the Tenant's documentary evidence provided to the RTB.

The Tenant is also claiming \$1,485.00 for reimbursement of Strata fees she paid each month in the amount of \$135.00 throughout the tenancy. The Tenant stated that she learned after the tenancy that tenants are not required to pay the Strata fees and that typically these fees are paid by the Landlord.

The Landlord's Counsel stated that the addendum to the tenancy agreement which was reviewed and signed by each party at the start of the tenancy states that the Tenant is responsible for paying the Strata fees each month. The Landlord provided a copy of the addendum in support. The Landlord's Counsel stated that the Strata fee covers the cost of water, garbage, and the use of common areas including pool, and clubhouse which is not included in the rent.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy

agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

The Tenant is claiming for compensation in relation to repairs to the irrigation system and for maintaining a section of the garden at the rental property. While the Tenant stated that she communicated her concerns about the irrigation system to the Landlord, I find that these texts were not included in the Tenant's documentary evidence to the RTB, nor were they provided to the Landlord. As such, I find that the Tenant provided insufficient evidence to demonstrate that she mitigated her loss by notifying the Landlord of the issues, prior to incurring the expenses to repair the irrigation and landscaping. As such, I dismiss these claims without leave to reapply.

The Tenant is also seeking compensation for paying Strata fees each month. In this case, I am satisfied the addendum between the parties clearly states that the Tenant is required to pay for Strata fees. I accept that these fees relate to water, garbage facilities and use of common areas that the Tenant was able to make use of. As such, I find that the Tenant is not entitled to the reimbursement of the fees, therefore, I dismiss this claim without leave to reapply.

As the Tenant was not successful with her Application, I find that she is not entitled to the return of the filing fee paid to make the Application.

Conclusion

The Tenant's Application is dismissed without leave to reapply.

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: November 26, 2021

Residential Tenancy Branch