



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, LRE, LAT, OLC, FFT

Introduction

On June 10, 2022, the Tenants applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “*Act*”), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking to set conditions on the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking authorization to change the locks pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On September 21, 2022, the Tenants amended their Application to remove a request for a repair Order and to increase the amount of monetary compensation they were seeking.

Tenant D.C. attended the hearing, and T.C. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord by registered mail on June 22, 2022. As well, she testified that their Amendment and documentary evidence was served to the Landlord by registered mail on September 23, 2022. T.C. confirmed that these packages received. Based on this solemnly affirmed testimony, I am satisfied that the Landlord was duly served with the Tenants’ Notice of

Hearing package, Amendment, and documentary evidence. As such, I have accepted this evidence and will consider it when rendering this Decision.

T.C. confirmed that the Landlord did not submit any documentary evidence for consideration on this file.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, the Tenant was advised to prioritize her claims to make the most efficient use of the one-hour hearing time. The Tenants are at liberty to apply for any other severed claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the Tenants entitled to a Monetary Order for compensation?
- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled to set conditions on the Landlord's right to enter?
- Are the Tenants entitled to authorization to change the locks?
- Are the Tenants entitled to an Order to comply?
- Are the Tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 13, 2022, that rent was established at \$1,545.00 per month, and that it was due on the first day of each month. A security deposit of \$772.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence; however, it was not signed by the Landlord.

The Tenant advised that the ad for the rental unit included an “outdoor patio” and a “fenced yard”. She stated that when they moved into the rental unit, the basement unit was vacant. She submitted that they had exclusive use of the yard; however, on June 9, 2022, she observed a man in their backyard. She testified that they then received an email from an agent of the Landlord who informed them that the basement was rented, that his parking spot was in the back, and that this person would be accessing the backyard to enter his rental unit. As well, this email also noted that the grass was long and that it required being cut by the weekend, or else the Landlord would cut it at the Tenants’ expense. In addition, the email stated that “the backyard grass is the tenants [sic] responsibility.”

She stated that it was their understanding that they had exclusive use of the backyard when they rented the unit. However, the email on June 9, 2022, was confusing as on one hand, it indicated that they had exclusive use of the backyard, but also noted that the Landlord would cut the grass at the Tenants’ expense if it was not maintained. She referenced emails, submitted as documentary evidence, where the property manager informed them that they were responsible for the yard maintenance. She cited Policy Guideline # 1 with respect to property maintenance and referred to emails sent to the property manager seeking clarity on whose responsibility it was for the yard maintenance.

As it is their position that they have exclusive use of the backyard, they are requesting an Order that they are permitted to put locks on the back gate, preventing access to the backyard. As well, she advised that they are seeking compensation in the amount of **\$1,800.00** due to this issue. This is comprised of **\$800.00** for the cost of the Tenants cutting the lawn four times when it was unclear if it was their responsibility to do so or not. Furthermore, the remaining **\$1,000.00** was calculated as \$200.00 per month (June to October 2022) for the loss in value of the tenancy, and the resultant loss of quiet enjoyment as the downstairs tenant has been accessing the backyard contrary to the tenancy agreement. She submitted that they have three children who no longer use the backyard as the gate has been left open, and there is now the possibility that strangers can enter. Moreover, the downstairs tenant can see right into their rental unit whenever he passes through the backyard. Finally, she stated that the Landlord ignores their communication, or delays responding to it, and that the Landlord threatened to take away their recycling bins after they raised complaints about issues in the past. T.C. advised that he was “not too familiar” with the circumstances surrounding this tenancy, and that he was “not exactly sure” if anyone stated that the Tenants had exclusive use of the backyard. As well, he confirmed that the tenancy agreement

indicated that the Tenants were responsible for the lawn in the backyard. He initially agreed that the Tenants had exclusive use of the backyard, except for the pathway, but he then conceded that the pathway was included as part of the backyard.

He referenced an email sent by the Tenants where they took no issue with the basement tenant walking through the backyard, and he stated that the basement tenant would have to walk around the property if not allowed to use the pathway. He confirmed that access to the backyard was only changed when the basement tenant's tenancy started, which was well after the Tenants' tenancy commenced. As well, he acknowledged that the Landlord did not provide the Tenants with any letter for the restriction of services or facilities when access to the backyard was granted to the basement tenant, nor was any compensation offered.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 27 of the *Act* indicates that a Landlord may terminate or restrict a service or facility if the Landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 28 of the *Act* outlines the Tenants' right to quiet enjoyment and states that the Tenants are "entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference."

Section 67 of the *Act* allows a Monetary Order to be awarded for damage or loss when a party does not comply with the *Act*.

Furthermore, with respect to the Tenants' claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenants prove the amount of or value of the damage or loss?
- Did the Tenants act reasonably to minimize that damage or loss?

As well, I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the submissions of the parties, the consistent and undisputed evidence is that the tenancy started on January 13, 2022, that the tenancy agreement indicated that the Tenants were responsible for the "upkeep/maintenance of lawns and grounds which involves but not limited to grass cutting and snow removal", and that T.C. acknowledged that the Tenants had exclusive use of the backyard. Furthermore, it is undisputed that the Tenants enjoyed exclusive use of the backyard up until the point that the Landlord rented the basement unit out on or around June 2022, and informed the Tenants that access to the backyard would change.

Based on the evidence before me, I am satisfied that the Tenants were granted exclusive use of the backyard as part of their tenancy agreement, which included the pathway leading through the backyard. As such, should the Landlord wish to terminate or restrict this use, the Landlord must comply with the *Act* by providing the proper written notice, and by reducing the rent accordingly. Given that the Landlord did not do this, I am satisfied that the Landlord has breached the *Act* by allowing another tenant to use and access this space.

Consequently, the Landlord is Ordered to advise the downstairs tenant that use of the pathway through the backyard is prohibited as of the date that this Decision is deemed received by the Landlord. As well, the Landlord is Ordered to provide the Tenants with exclusive use of the backyard again. The Tenants' request to put a lock on the backyard fence is dismissed with leave to reapply. Should the downstairs tenant continue to access his unit through the backyard, the Tenants should inform the Landlord in writing of this. Should this continue without intervention by the Landlord, the Tenants are at liberty to apply for authorization to install a lock, and for monetary compensation.

With respect to the Tenants' claim for compensation in the amount of \$800.00 for the cost of lawn cutting, as the Tenants have exclusive use of the backyard and are responsible for routine yard maintenance, I reject this claim for compensation. Should the Tenants not maintain the backyard in accordance with the tenancy agreement, the Landlord should caution the Tenants in writing to rectify this issue. Should the Tenants then not comply with this warning letter, the Landlord's recourse would be to serve a One Month Notice to End Tenancy for Cause.

Regarding the Tenants' claim for compensation in the amount of \$1,000.00 for the loss of quiet enjoyment of the backyard, I reject the claim for this amount as I am not satisfied from their evidence that they have sufficiently justified this amount of loss. However, as I am satisfied that the Landlord did breach the tenancy agreement by restricting the Tenants' exclusive use of the backyard, I find it appropriate to grant the Tenants a monetary award in the amount of \$100.00 per month for the loss of use of the backyard for the months of June to November 2022, totalling **\$600.00**.

As the Tenants were partially successful in these claims, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenants a Monetary Order as follows:

Calculation of Monetary Award Payable by the Landlord to the Tenants

Item	Amount
June 2022 compensation	\$100.00
July 2022 compensation	\$100.00
August 2022 compensation	\$100.00
September 2022 compensation	\$100.00
October 2022 compensation	\$100.00
November 2022 compensation	\$100.00
Recovery of filing fee	\$100.00
Total Monetary Award	\$700.00

Conclusion

Based on the above, the Landlord is Ordered to return the exclusive use of the backyard to the Tenants immediately after being deemed to receive this Decision. Furthermore, under the offsetting provisions of the *Act*, I allow the Tenants to withhold the monetary award in the amount of **\$700.00** from the next month's rent.

The Tenants' claim for authorization to change the locks is dismissed with 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 25, 2022

Residential Tenancy Branch