



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPL, MNRL-S, MNDL-S, FFL**

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for an order of possession, for a monetary order for unpaid rent, to have the tenant pay to repair the damages to the rental property and for an order to retain the security deposit and pet damage deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

At the outset of the hearing the parties agreed that the tenancy has ended. Therefore, I find I do not need to consider the landlord’s request for an order of possession.

In this case, the landlord is claiming for damages to the yard that are related to the overgrowth of black berries and animal feces. I am not prepared to consider any testimony that is related to the condition of the rental unit at the end of the tenancy as the landlord’s application was not amended. The landlord is a liberty to make a new application for dispute resolution.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords entitled to monetary compensation for damages?

Are the landlords entitled to retain the security deposit and pet damage deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2014. Rent in the amount of \$1,375.00 was payable on the first of each month. The tenant paid a security deposit of \$687.50 and a pet damage deposit of \$687.50 (the "Deposits").

The landlord's testified that that the tenant did not pay any rent for October 2022 and were overholding the premises as the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), with an effective date of September 30, 2022. The landlord stated that they receive a note from the tenant that they would not be leaving until October 31, 2022. Filed in evidence is a copy of the Notice and a copy of the tenant's note indicating they were not leaving until October 31, 2022.

The landlord testified that they had discovered the tenant had vacated on October 15, 2022.

The landlord testified that the tenant allowed the blackberry bushes that were on the other side of the fence to take over the property. The landlord stated they have not had the work done; however, the estimate is about \$3,000.00.

The tenant testified that they vacated the premises on October 13, 2022. The tenant acknowledged that they did not pay rent for October 2022 and that they did receive their compensation for receiving the Two Month Notice for Landlord's Use of Property.

The tenant testified that last year the landlord was aware of the problem with the blackberry bushes and indicated that they would come and spray the bushes, which they never did. The tenant stated that for the last two years they have been sick with cancer, and it was impossible for them to do.

The tenant's agent stated that there is no tenancy agreement between the parties and it would be the landlord's responsibility to maintain any bushes or trees as that is a huge undertaking to expect a tenant to do.

The landlord responded that they did not come back to spray the blackberry bushes because the product they had was only for agriculture use and not residential use.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the landlords have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation, or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the tenant did not vacate on the date required by the Two Month Notice to End Tenancy for Landlord's Use of Property as the tenancy was to end on September 30, 2022. The tenant received their compensation under section 51 of the Act. I find the tenant breached the Act when they failed to give the landlord possession of the rental unit on September 30, 2022.

The evidence of the tenant was they left on October 13, 2022, and the evidence of the landlord was that they discovered the tenant vacated on October 15, 2022. As I have no evidence from the tenant to support that they informed the landlord that they had vacated the property on October 13, 2022, and returned the keys, and it was not until October 15, 2022, the landlord discovered the premises was empty. I find the landlord is entitled to recover prorated rent up to October 15, 2022, as it is the tenant's responsibility to inform the landlord that they have vacated the premises. Therefore, I find the landlord is entitled to recover 15 days of rent in the amount of **\$687.45**.
(\$1,375.00\30=45.83x15=\$687.45)

The landlord was aware of this issue of the blackberry bushing taking over the property long before the tenancy ended, blackberries plants are an evasive species and is a major project as they require regular pruning or removal.

Under the Residential Tenancy Policy Guideline 1, which clarifies the rights and responsibilities of the parties for the premises under the Act, the landlord is responsible for major projects, such as tree cutting, pruning and insect control.

I find it was the landlord's responsibility to ensure that they pruned the blackberry plants on a regular basis, not the tenant. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$787.45** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the amount of \$787.45 from the Deposits, in full satisfaction of the claim. This leaves a balance due of the Deposits of \$587.55. I have not ordered the return the balance due. The tenant had not provided the landlord with their forwarding address as required by the Act and the landlord has a subsequent claim for damages to the rental unit since the tenancy has ended.

Conclusion

The landlord is granted a monetary order and may keep a portion of the Deposits in full satisfaction of the claim. I have not ordered the remaining balance due of the Deposits as the tenancy has ended and the tenant has not provided the landlord with a forwarding address.

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 28, 2022

Residential Tenancy Branch