



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, (OLC, RR)

Introduction

The hearing that was due to be held on July 13, 2009 was reconvened to today's date to allow the applicant opportunity to attend due to having been admitted to hospital at the time of the original hearing. At the beginning of the hearing the tenant states that she has now moved from the rental unit and therefore withdraws her application to Order the landlord to comply with the act, regulation or tenancy agreement and to allow the tenant to reduce rent for repairs services or facilities agreed upon but not provided.

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement.

The tenant served the landlord by registered mail on June 17, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the tenant entitled to compensation for damage or loss under the *Act*?

Background and Evidence

This tenancy started on November 01, 2008 and ended on August 31, 2009. The tenant paid a monthly rent of \$500.00 which was due on the 1st of each month.

The tenant testifies that when she moved into the two bedroom basement suite with her dog and three cats she was shown the outside backyard area which she was pleased to have use of for her dog. The tenancy agreement between both parties states that the tenant is renting the basement suite and backyard. The tenant testifies that she had use of the large backyard throughout the winter months, however, towards the end of May, 2009 the landlord restricted the tenants' use of the larger backyard to a much smaller yard with little or no grass. The tenant is claiming compensation for the loss of the larger backyard area for her dog to use.

The landlord testifies that when she showed the tenant the basement suite the yard that was agreed on in the tenancy agreement was the smaller basement backyard and not the landlords own backyard. She testifies that throughout the winter months the tenant assumed she could use the landlords' backyard for her dog and because she left the gate open snow drifts filled the tenants' yard area. Because of this the landlord did not object to the tenant using her backyard for her dog during the winter months. The landlord also testifies that she had told the tenant that she would be renovating the basement yard in the spring so the tenant would have a larger area to use. the landlord and her witness testify that the tenant did not clean up after her dog and there were

concerns about dog faeces being left in the landlords backyard which prevented her grandchildren playing in this area and caused smells to pervade her neighbours garden.

The tenant testifies that when the landlord started work on the fence to further enclose the smaller yard area she was not told that her access to the larger yard would be restricted. She testifies that she was left with a small space which was not suitable for her dog to play in.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of the parties and witnesses. Based on the inconsistency between the tenants' evidence and the evidence of the landlord, I find that there has been a misunderstanding by the tenant as to the tenants' use of the landlords' backyard. The tenancy agreement simple states that the tenant has use of a backyard it does not specify that she has use of the landlords' backyard. The tenant assumed the area was the landlords' larger backyard when the landlord did not prevent her from using this area in the winter months. The landlord did provide the tenant with a separate space for her sole use and this was being expanded in the spring.

I find that the terms of the tenancy agreement are ambiguous and do not fully imply which area the tenant should have used for her dog. However, the landlord had provided a separate area for the basement suite tenants to use. The tenant assumed that as there was gate leading from this into the landlords' backyard and as the landlord did not prevent her using her backyard in the winter she continued to use the larger yard.



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I find that the landlord has provided the tenant with her own backyard space as specified in the tenancy agreement. The landlord is within her rights to prevent the tenant accessing her own backyard.

Given the above, I find that the tenant's request for compensation for the loss of the use of the landlords' backyard has no merit and must be dismissed.

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: September 01, 2009.

Dispute Resolution Officer