



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MND, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for damage to the rental unit or residential property and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Landlord stated that she mailed copies of the Application for Dispute Resolution and Notice of Hearing to the Tenants Tenant via registered mail at the service address noted on the Application, on August 12, 2009. The Landlord submitted documentation from Canada Post that corroborates that mail was sent to each Tenant on August 12, 2009 and that it was unclaimed by the Tenants.

The Tenants stated that they did not receive these documents in the mail. They stated that they did receive the documents directly from the Residential Tenancy Branch, however, and they are prepared to proceed with the hearing.

Both parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted seventy-seven photographs to the Residential Tenancy Branch in support of her Application for Dispute Resolution. She stated that she did not serve copies of these photographs to the Tenants in support of this Application for Dispute Resolution, as she was aware that the Tenants had been in possession of those photographs pursuant to previous dispute resolution proceedings relating to this tenancy. The female Tenant stated that she was not currently in possession of those photographs. As the photographs were not properly served on the Tenants and the Tenants did not have access to them at the hearing, I declined to accept the photographs as evidence.

The Tenants acknowledge receiving several documents and nine photographs in the mail that were sent to her on November 11, 2009, and those items are being accepted

as evidence. These photographs do not depict the condition of the property at the end of this tenancy.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for damage to the rental unit and residential property and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 01, 2008; that the Tenants and the Landlord lived in separate houses on the same farm; that the Tenants were required to pay monthly rent of \$2,000.00; and that the tenancy ended on March 31, 2009 or April 01, 2009.

The Landlord and the Tenant agree that a condition inspection report was not completed at the beginning of this tenancy.

The Landlord and the Tenant agree that a condition inspection report was completed by the Landlord on March 31, 2009, a copy of which was submitted in evidence. This report is signed by the Landlord but is not signed by either Tenant. The report is lacking in detail and only makes reference to an ash pile in the backyard; that the garbage containers were full of garbage; that some trees were damaged; that there are holes in the wall from a fish tank; that there is a metal plate on the kitchen door; and that the door to the garage is off the top hinge.

The Landlord is seeking compensation, in the amount of \$1,120.00 for the money she paid for cleaning the exterior of the residential property and for the time she spent cleaning the property. She stated that a variety of items on the property required removal and/or cleaning, including a fish pond that the Tenants had installed using rocks from a rock wall on the property, a burn pile that contained inflammable items; metal wiring; bags of garbage; and a freezer that was full of meat.

The Witness for Landlord #1, who is her 11 year old son, stated that he observed the male Tenant removing rocks from a rock wall on the property and placing them in front of the house. He stated that he does not know what the Tenant was doing with the rocks.

The female Tenant stated that this property was a farm and was not a finely landscaped piece of property at any point during their tenancy. Although she agrees that they burned debris, she denied that there was a significant amount of inflammable items left in the resulting ashes. She denied building a fish pond and she contends that that

property was in similar condition at the end of the tenancy as it was at the beginning of the tenancy. She stated that the male Tenant did build a rock border with rocks but that he was using rocks that he brought onto the property, and she assumes that this is what the Witness for the Landlord #1 observed. She stated that they did not leave a freezer full of meat in the rental unit.

The Witness for the Landlord #2 stated that he was hired by the Landlord to clean a variety of areas on this residential property. He stated that he was not on the property when this tenancy began so he is unable to attest to the condition of the property at that time. He stated that he disposed of a variety of meat and food items that had been left in a freezer in the basement of this rental unit.

The Landlord is claiming compensation, in the amount of \$237.50, for the cost of removing walls in the basement of the rental unit. The Landlord stated that the Tenants sublet the basement of the rental unit and that those occupants asked her if they could build a room in the basement. She stated that she advised the occupants that they could build the room providing they removed the room at the end of the tenancy. The female Tenant stated that she was not aware that the Landlord had asked the Tenants to remove the room at the end of their tenancy and that they were not asked to remove the room after their subtenant vacated the basement.

The Landlord is claiming compensation, in the amount of \$168.57, for replacing the glass in the door of a wood stove located in the basement. The Landlord stated that this glass was broken during the tenancy. The female Tenant stated that they did not use this wood stove and she does not believe it was broken during her tenancy.

The Landlord is claiming compensation, in the amount of \$50.00, for an extension cord that the Tenants took with them at the end of the tenancy. The Landlord and the Tenant agreed that an extension cord the Landlord was using to supply power to a motorhome parked on the property was inadequate. She stated that the male Tenant replaced the inadequate extension cord with his extension cord, at the request of the Landlord. She stated that the Tenants took their extension cord at the end of the tenancy but did not return her old one. The Landlord contends that they traded extension cords and the Tenants contend that they simply loaned their cord to the Landlord. The male Tenant stated that he never took the Landlord's extension cord with him and that it is still somewhere on the property.

The Landlord is claiming compensation, in the amount of \$100.00, for a saddle pad cover that she loaned to the Tenant during this tenancy and has not been returned. She stated that this loan was not related to a term of this tenancy.

The Landlord is claiming compensation, in the amount of \$285.00, for hay that the Tenant agreed to purchase from her. She stated that this purchase was not related to a term of this tenancy.

The Landlord is claiming compensation, in the amount of \$150.00, in lost wages. She contends that she lost wages because she felt compelled to remain on the property due to the behaviour of the male Tenant after the Tenants were served with a Ten Day Notice to End Tenancy.

Analysis

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Landlord submitted insufficient evidence to establish that the residential property was in substantially different condition at the end of the tenancy than it was at the beginning of the tenancy. In reaching this conclusion I was strongly influenced by the absence of any documentary evidence, such as photographs or a Condition Inspection Report, that establishes the condition of the property at the beginning of the tenancy. I am therefore unable to determine whether there was a pond on the property at the beginning of the tenancy; whether there was a burn pile on the property at the beginning of the tenancy; whether there were items, such as electrical wire or a table saw on the property at the beginning of the tenancy; and the location and condition of rock walls on the property at the beginning of the tenancy.

I find that the Condition Inspection Report that was completed at the end of the tenancy by the Landlord does not corroborate the Landlord's testimony that the rental property required significant cleaning at the end of the tenancy. I note that the report declares that there was an ash pile and some garbage containers that were full of garbage in the rental unit at the end of the tenancy. I find that the absence of any references in the report to a fish pond being installed or to a variety of other damages and debris lends credence to the Tenant's position that the condition of the property did not change significantly during this tenancy.

Although I accept that the Witness for the Landlord #2 performed a variety of work on the property, I find that the Landlord has failed to establish that the work was required to clean debris that was left by the Tenants or to repair damages that were caused by the Tenant. I specifically note that this witness has not knowledge of the condition of the property at the beginning of the tenancy. As I have no photographs of the size of the ash pile or the amount of the garbage left in the containers, I find that I cannot conclude that the Landlord is entitled to compensation for cleaning these areas, as I cannot determine the amount of cleaning that was necessary. On this basis, I dismiss the Landlord's claim for compensation for cleaning the residential property.

Although the Landlord did not mention the freezer full of food in the Condition Inspection Report, I find that the evidence provided by the Witness for the Landlord #2 is sufficient to cause me to conclude that there was a freezer full of food left in the rental unit and that the Landlord paid this witness to remove those items. Although the Tenant denies leaving these items, I find that it is highly unlikely the items could have been left by any other party. As the Witness for the Landlord #2 did not provide a precise breakdown of the time he spent disposing of the food items, I find that he must have spent approximately two hours performing that task and I award the Landlord compensation, in the amount of \$20.00 per hour, which I find to be reasonable compensation for labour of that nature. On this basis, I find that the Landlord is entitled to compensation of \$40.00 for disposing of the food items.

In the absence of evidence to the contrary, I find that the Landlord entered into an agreement with the sub-tenant, in which she agreed to allow the sub-tenant to build a room in the basement of the rental unit and that the sub-tenant had agreed to remove the walls at the end of the tenancy. There is no evidence to show that the Landlord ever advised the Tenants that the sub-tenant was supposed to remove the walls. I find that the Landlord was obligated to mitigate her losses in this matter by advising the Tenants that the walls were supposed to be removed prior to the end of this tenancy, which would have afforded the Tenants the opportunity to remove the walls at their own expense. As the Landlord is required to mitigate her losses, pursuant to section 7(2) of the *Act*, I find that she is not entitled to compensation for removing these walls. On this basis, I dismiss her claim for compensation in the amount of \$237.50 for removing the walls.

I find that the Landlord submitted insufficient evidence to establish the condition of the wood stove at the beginning of the tenancy. In reaching this conclusion, I was strongly influenced by the absence of evidence, such as a Condition Inspection Report or photographs, that corroborates the Landlord's statement that the stove was in good condition at the beginning of the tenancy. As the Landlord has failed to establish the condition of the wood stove at the beginning of the tenancy, I find that she has not established that this stove was broken during the tenancy. As the Landlord has failed to establish that the stove was broken during the tenancy, I find that the Tenants are not obligated to repair the stove. On this basis, I dismiss the Landlord's application for compensation to repair the glass in the door of the wood stove.

I find that the Landlord submitted insufficient evidence to establish that the Tenants took an extension cord belonging to the Landlord at the end of the tenancy. In reaching this conclusion, I determined that it is entirely possible that the Landlord's extension cord was simply misplaced during this tenancy; that it is unlikely the Tenants would have agreed to exchange their extension cord for an inferior one; that the Tenants had every right to take the extension cord that they had loaned to the Landlord; that there is no evidence to cause me to conclude that the Tenants also took the extension cord that belonged to the Landlord; and that the Tenants were under no obligation to ensure that the Landlord's extension cord was safely stored in these circumstances. On this basis, I dismiss the Landlord's claim for compensation for an extension cord.

I decline to consider the Landlord's compensation for the saddle pad cover or hay, as those claims do not relate to a term of this tenancy and I do not have jurisdiction to resolve disputes that are unrelated to a tenancy.

I find that the Landlord's decision to remain on the property after serving the Tenants with a Notice to End Tenancy is an administrative expense that is related to being a landlord. I find that landlords are not entitled to expenses of this nature and I therefore dismiss the Landlord's application for compensation for lost wages.

I find that the Landlord's application has been largely without merit, and I dismiss the Landlord's application to recover the fee from the Tenants for filing this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$40.00 and I grant the Landlord a monetary Order for that amount. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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, 2009.

Dispute Resolution Officer