Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the tenants – MNDC, O

For the landlord – MNDC, O, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The tenants seek a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act),* regulation or tenancy agreement and have other issues. The landlord seeks a Monetary Order for money owed or compensation for damage or loss under the (Act), regulation or tenancy agreement. The landlord also requests the filing fee and has other issues.

Both Parties served the other Party by registered mail with a copy of the Application and Notice of Hearing. I find that both parties were 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 make submissions to me. The landlord had a witness but did not ask the witness to join the hearing to give evidence on her behalf. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are the tenant's entitled to a Monetary Order in compensation for damage or loss?

- Is the landlord entitled to a Monetary Order in compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on April 01, 2009 and was for a fixed term until September 01, 2009. They had a mutual agreement that the tenancy could end on August 15, 2009. Rent for this property was $1,450.00 per month and was due on the first of each month. The tenants paid a security deposit of $725.00. The security deposit has been returned to the tenants.

Tenants claim

The tenants testify that when they moved from the property they left their second vehicle (a Pathfinder), at the property to be collected later and provided the landlord with their contact numbers if she needed to talk to them. The tenants testify that they were due to return to collect their vehicle around 10 days later. When they did return to the property they found new tenants in the house and the Pathfinder was gone. The tenants state that they contacted the Police and the local towing company who told the tenants that they had towed the car away at the request of the landlord. The tenants asked if they could come and collect their vehicle and were told it had been taken to the wreckers. The tenants contacted the wrecking yard and were told that their Pathfinder had been crushed.

The tenants testify that their Pathfinder was drivable, roadworthy and all aspects of the vehicle were in good working order. The insurance on the vehicle had lapsed in July, 2009 and due to the move the tenants had not yet renewed the insurance for the vehicle. The tenants claim that despite having given the landlord their telephone numbers she did not attempt to contact them before taking the action to have their vehicle towed away. The tenants have not provided an estimate in writing for the Pathfinder but state that originally they thought the vehicle was worth around $2,000.00 but after seeking an estimate from the mechanic who had regularly serviced the Pathfinder over several years they were verbally informed its value was $4,000.00.

The tenants also seek $500.00 for the upset and nuisance caused by the landlords' actions in having their car crushed and her refusal to respond to the tenant's attempts to resolve the issues until September 10, 2009. The tenants also seek interest on their security deposit for the month of September as the landlord did not return the deposit until sometime towards the end of September.

The landlord disputes the tenant's allegations that she was responsible for the wrecking of their vehicle. The landlord testifies that when she re-rented the property the new tenants needed the parking space for their trailer. The landlord states she did try to telephone the tenants but got no answer. The landlord agrees that she did have the Pathfinder towed off the property but thought it would be stored. She states she was not told it would be crushed by the towing company. The landlord also states that she was unaware at that time that it was a fully functioning vehicle.

Landlords claim

The landlord testifies that she bought the property from the tenants and they then rented the property from her as tenants for six months following the sale. The landlord states that when she viewed the property there was a large dog run in the yard. After the tenants moved out this dog run was removed by the tenants. The landlord argues that on the purchase documents it lists the included items and states "Excluded - Nothing." The landlord argues that the tenants should not have removed the dog run as this was part of the purchase property and therefore belonged to her. She also states that the tenants did not mention to her that the dog run would be removed. The landlord is claiming $2,500.00 in compensation to replace this dog run.

The tenants argue that the dog run was removable fencing and belonged to them. The tenants claim that their realtor told the landlord during her viewings of the property that they would be removing this when they left the property.

The landlord testifies that at the end of the tenancy she found the tenants had not maintained the yard. The landlord claims she had to clear 20 feet of overgrown blackberry bushes and grass, there were rusty metal brackets, fast food containers and bags, broken glass, root balls,

an old Christmas tree and lengths of re-bars. The landlord claims she cleared 418lbs of yard waste over 10 days working six hours a day at a cost of $1,200.00. The landlord also claims $95.20 to hire a lawn mower and weed eater to help with this yard clearance.

The tenants argue that the blackberry bushes were always growing in the yard and the landlord had not specified in the tenancy agreement that they were responsible for the yard work. The tenants claim that some of the landlords' photographs showing the yard were taken in the winter before the blackberry bushes came into full force.

The landlord claims the cost of $95.00 for a replacement remote control for the garage as this was not returned by the tenants.

The tenant's emails indicate that they had not returned this remote control at the end of their tenancy.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants claim for $4,000.00 for the replacement of their Pathfinder vehicle; I find the landlord was responsible to store the tenant's belongings which she may have deemed to have been abandoned. Section 25 (1) of the Regulations states: *a landlord must store tenant's personal belongings in a safe place and manner for a period of not less than 60 days following the date of removal.* Therefore I find the landlord did not store the tenant's vehicle as specified under the Regulations and the tenants are entitled to be compensated for this loss.

However, I find the tenants have not provided sufficient evidence to support their claim that the Pathfinder was worth $4,000.00. The tenants state in their evidence that the Pathfinder was registered in 1988 and the mileage was 400,000. The tenants have also testified that the Pathfinder was in good working order. I have therefore applied an amount for the Pathfinder based on this information and the evidence sent in by the landlord concerning similar vehicles

for sale. The evidence presented relates to vehicles of the same age but does not fully detail the condition or mileage of the vehicles for sale. Consequently, I find that the tenants are entitled to recover **$2,000.00** for the cost of their vehicle from the landlord.

With regard to the tenants claim for $500.00 for the upset and nuisance caused to them by the landlords actions. I refer the Parties to RTB Guideline #16 – Claims in Damages describes "aggravated damages (in part) as follows at p. 3:

> *"These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behavior. They are measured by the wronged person's suffering."*

I accept that the landlord did not know that the tenant's vehicle would be crushed when she had it towed from the property; however, a landlord cannot avoid her responsibilities under the *Act* or regulations by claiming she was unaware of portions of the *Act* or regulations. In this instance I find the tenant's car was crushed as a direct result of the landlords' indifference to the tenant's personal belongings and her inability to abide by the Regulations concerning the safe storage of the tenant's belongings. It was therefore the landlords' actions in allowing the car to be crushed either purposefully or inadvertently which caused the upset and nuisance to the tenants. I therefore uphold the tenants claim for **$500.00** in compensation.

With regard to the tenants claim for interest on their security deposit; I find no interest has been awarded to security deposits for the year 2009 and therefore this section of the tenants claim is dismissed.

In regard to the landlords claim of $2,500.00 for the dog fence; I find as the dog fence was part of a purchase contract for the property between the parties prior to the tenancy commencing

that I do not have Jurisdiction in this matter. Therefore, I decline Jurisdiction with regard to the landlords claim for $2,500.00 for the dog run.

With regard to the landlords claim for compensation for the yard work; I refer the Parties to #1 of the Residential Tenancy Policy Guidelines. This guideline refers to the landlords and tenants responsibility for residential premises which states: Generally a tenant who lives in a single family dwelling is responsible for routine yard maintenance which included grass cutting and clearing snow. The tenant is responsible for a reasonable amount of weeding the flower beds if the tenancy agreement requires a tenant to maintain the flower beds. In this instance I find that the tenancy agreement does not specify that the tenants are responsible for weeding the flower beds and consequently I find the landlords claim for compensation of $1,295.20 is dismissed.

With regard to the landlords claim for the costs of $95.00 for replacing the garage remote control; I find in favor of the landlords claim as the tenants e-mail does indicate that this was not returned to the landlord at the end of the tenancy.

As the landlord has been largely unsuccessful with her claim I find she must bear the cost of filing her own application.

The tenants are entitled to a monetary award for the following amount:

Costs for the Pathfinder	$2,000.00
Less $95.00 owed to the landlord for the garage remote	(-$95.00)
Total amount owed to the tenants	**$2,405.00**

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **$2,405.00.** The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

I dismiss the tenants claim for interest on their security deposit.

I HEREBY FIND in partial favor of the landlords claim and the amount of $95.00 has been offset against the sum owed by the landlord to the tenants.

The landlords claim for compensation for yard work is dismissed without leave to reapply.

The landlords claim for a Monetary Order for the dog run is dismissed as I decline Jurisdiction in this matter.

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: February 22, 2010.

Dispute Resolution Officer