



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NKS Enterprises
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR OPC OPB MND MNR MNSD MNDC FF O MT CNR OLC

Introduction

This hearing was convened pursuant to applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for unpaid rent, as well as for an extension of time to make that application; an order for recovery of the security deposit; and an order that the landlord comply with the Act. The landlord applied for an order of possession, a monetary order and an order to retain the security deposit in partial compensation of the claim. The female tenant and an agent for the landlord participated in the teleconference hearing on both dates.

The hearing first convened on March 11, 2014. On that date the parties confirmed that the tenants moved out of the rental unit on March 1, 2014. I therefore dismissed the portions of the applications regarding the notices to end tenancy and the tenant's application for an order that the landlord comply with the Act.

Due to issues with service of evidence, I determined that it was appropriate to adjourn the hearing. The hearing reconvened on May 12, 2014. On that date, the tenant stated that she no longer wished to pursue the amended portion of her application, only return of the \$900 security deposit. The landlord reduced her claim to \$900 for February 2014 rent and \$1365 for damage to the lawn.

Preliminary Issue – Landlord Telephone Problems

In the teleconference hearing on May 12, 2014, the tenant and I were not always able to hear the landlord, as her voice intermittently cut out. The landlord stated that she could hear both of us. At approximately 16 minutes into the hearing, I asked the landlord to try disconnecting and calling back in. The tenant and I waited on the line for two minutes, and the landlord reconnected.

The landlord's voice continued to cut out intermittently. The landlord confirmed that she was calling from her cell phone. I asked the landlord if she could call in from a land line, and she stated it would take her approximately 15 minutes to get to a land line. I informed the landlord that I would not delay the hearing for 15 minutes, and we would proceed with the hearing. The landlord was well aware that the hearing would be taking place at the scheduled time and date, and it was her responsibility to ensure that she had access to a properly-functioning phone. The hearing had already been adjourned once, and it would have been unfair to the tenant to adjourn a second time because the landlord had not taken steps to ensure she could fully participate in the hearing.

The tenant and I were able to hear the landlord's testimony regarding her application and her response to the tenant's application. Additionally, I informed the parties that I would review and consider all of their documentary and photographic evidence. I was satisfied that the landlord presented all necessary evidence to articulate her claim and her response to the tenant's claim.

I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to recovery of the security deposit?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on May 1, 2013, as a fixed term tenancy to end on April 30, 2014. Rent in the amount of \$900 was payable in advance on the first day of each month. At the outset of the tenancy, the tenant paid the landlord a security deposit of \$450, and on June 30, 2013 they paid the landlord a pet deposit of \$450. The landlord did not complete a condition inspection report with the tenant at the outset of the tenancy.

The tenant did not pay rent for February 2014. The tenancy ended on March 1, 2014.

Tenant's Claim

The tenant applied for recovery of the pet and security deposits. The tenant stated that she gave the landlord her forwarding address through text message.

On February 13, 2014 the landlord made her application for monetary compensation for unpaid rent and damages, and to keep the security deposit in partial compensation of the monetary claim.

Landlord's Claim

The tenant did not pay rent for February 2014, and the landlord claimed \$900 for February 2014 rent. The landlord also claimed \$1365 for damage to the lawn. The landlord's evidence was that the tenant damaged the grass and soil in the back yard by repeatedly riding a motorbike on it. In support of this portion of her application the landlord submitted photographs showing a deep path cut into the grass in the backyard.

The tenant's response to the landlord's claim was as follows. The tenant acknowledged that she did not pay the rent for February 2014. In regard to the damage to the lawn in the backyard, the tenant stated that she offered to buy some grass seed, but the landlord told the tenant that she was not worried about the lawn. The tenant further stated that her boyfriend is a landscaper, and they could have done the work for less money. The tenant did not agree with the landlord's claim of \$1365 to repair the lawn damage.

Analysis

In regard to the tenant's claim, I find as follows. The landlord did not provide evidence that they did a move-in inspection and completed a condition inspection report with the tenant at the outset of the tenancy; therefore, the landlord's right to claim against the deposits for damage to the rental unit is extinguished. However, the landlord claimed for unpaid rent as well as for damage, and the landlord's application was made before the end of the tenancy; therefore, the landlord has complied with section 38 of the Act, and the tenant is not entitled to double recovery of the security deposit. I note that providing a forwarding address by text message is generally not accepted as providing a forwarding address in writing as required by the Act.

In regard to the landlord's claim, the landlord is entitled to \$900 for February 2014 rent, as the tenant acknowledged that she did not pay that amount. I find that the landlord is not entitled to any amount for damage to the lawn, as the landlord did not provide any quotes or receipts to confirm the amount claimed.

As the applications of the tenant and the landlord were both only partially successful, I decline to award either party their respective filing fee.

Conclusion

The landlord is entitled to \$900 for February 2014 rent. I order the landlord to retain the security and pet deposits of \$900 in full compensation of this amount.

I dismiss the remainder of the landlord's application and the tenant's application.

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: May 13, 2014

Residential Tenancy Branch

