



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC FF

Introduction:

Both parties, witnesses, and professional representatives attended the hearing and gave sworn testimony. The landlord testified that there was a 10 Day Notice for unpaid rent dated July 13, 2017 but the tenant paid the rent as required so it is cancelled. The tenant filed their Application for Dispute Resolution dated June 23, 2017 and the parties agreed it was served personally. I find the documents were legally served pursuant to section 89 of the *Residential Tenancy Act* (the Act) for the purposes of this hearing. The tenant applies pursuant to the Act for orders as follows:

- a) A monetary order or rent rebate pursuant to Sections 7, 27, 32, 65 and 67 for damages and lack of repair;
- b) To order that repairs be done; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that the landlord has neglected to repair the property and maintain it in a condition suitable for occupancy contrary to section 32? What losses has the tenant suffered as a consequence and to how much compensation have they proved entitlement? Are they also entitled to an Order to Repair and to recover the filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced September 1, 2016 on a fixed term to September 31, 2017. Rent is \$1900 a month and a security deposit of \$950 and a pet damage deposit of \$950 were paid. The tenants made an up front payment of \$13,300 to cover the first several months of rent. They were given permission to sublet and have a tenant who pays \$800 a month including utilities.

The premises are described as part of a duplex with the landlord living on the other side. The homes are on a mountain with the tenant's being the upper duplex and the subletting tenant occupying a part of the landlord's home which is flatter land.

The owner purchased the home in August 2016 and when he rented it to the tenants, he told them he would put up a fence at some point because of the steep lot. He said the tenant told him it was okay, he would put up a fence for the dog and he put in the orange type construction fence which is shown in photographs. The tenant denies this and says the orange fence is the landlord's and is still on the lot. The tenant said they only supplied a chicken wire fence for the dog. Photographs are in evidence.

On February 28, 2017, the landlord notified the tenants that he was dumping fill in the front yard. Five dump truck loads were dumped. The landlord said he discussed this with the tenants and they agreed. They deny this. Evidence was given by the parties as follows:

1. From March to April 2017, the path to the subletting tenant's suite was blocked by the dirt. The tenants intend to share some rebate with them, if granted.
2. The access to the tenant's garage was blocked. The dirt was supposed to be moved in one week but it was 58 days before the landlord began moving it, late in the evening and disturbing the children of the tenant. This was an excessively wet winter and the landlord had problems getting contractors.
3. In April, a one foot path was cleared for access but the tenants had difficult access with dirt and slippery mud as it was raining; the mud tracked into the house.
4. The tenants still do not have full access to their back yard for their deck has been boarded off as unsafe, the back yard is dirt and mud and they have to walk all around the house to access it.
5. Some of the material dumped in front of the tenant's home was used for some fill for the owner's side of the duplex. His side looks green and beautiful.
6. The front yard now has some grass filled with dirt and some top soil that will likely slide into the driveway for it is a downward slope.
7. The back yard remains the same, the top soil has blown off and there is no grass.

8. The owner was trying to make the property safe and had to build a retaining wall for a fence. There was no real yard, just rock and he tried to make it better.
9. There was too much rain and the contractors did not want to do it; it was a big project and a tree had to be removed.
10. The property managers said the grass and flower seeds were sown but the tenant did not water them so they died. The landlord had notified the tenant to water, he had bought hoses and obtained a city water license and the grass is growing already in the front yard but the tenants did not water so made the problems worse.
11. The tenants said a dog run was supposed to be installed in the back yard to protect new grass and it was not done. The managers said there was dog poop everywhere in the back yard and they requested the tenants to pick up the poop so work could be done. A city bylaw requires dog poop to be removed.

The tenants request a rent rebate of 50% of their rent from March to September 2017 and continuing until the back yard is safe for their children. This means with grass, a fence and removal of debris. They request repairs be made to the deck with safe stairs and a railing. The deck which leads to the backyard is currently blocked with a board leaving no access to the yard from the house.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

The onus is on the applicant tenant to prove on the balance of probabilities that the landlord by act or neglect breached the Act or their tenancy agreement and caused them losses. I find section 32 of the Act requires a landlord to *provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant.*

I find the landlord, through his act of having 5 dump truck loads of dirt put in front of the tenant's house in late February 2017 breached section 32 of the Act. I find for a significant period of time, due to these actions, the tenant's home was difficult to access and they did not have full use of their front or back yard. I find this was particularly difficult as they have two young children and sublet a suite to another person. However, I find they still had full use and comforts of the home and suite and the landlord tried to assist by providing some parking and clearing a narrow walkway. I find the claim for a 50% rebate of rent to be excessive as the loss of use and poor access were limited to the grounds of the home and other factors in evidence are significant. I find them entitled to 15% rebate of rent from March to September 2017 for the loss of use of their yards as the photographic evidence illustrates that much debris, old wood and old fencing remains. However, I find they did not have total loss of use of the yards for their many photographs show their dog continually using the back yard. I also find the weight of the evidence is that the tenants' own actions have contributed to the continued delay in the back yard restoration. The property manager's evidence which I find credible is that the amount of their dog's poop has prevented a dog run installation and growth of the grass seed in the back yard. I find the photographs in evidence show the dog poop and seeds which support the manager's credibility. While they may be entitled to further consideration, I find the tenants must first cooperate and remove their dog poop so a dog run can be installed and debris can be removed and grass seed can be put down. I take note that many professionals will not work in dog feces due to health concerns. I also find the tenants did not mitigate the situation by watering the back yard to encourage the new seeds.

I take note also of the location. The tenants chose to rent a home near the top of a mountain that had a number of challenges. I find the landlord's evidence credible that he was trying to make the yard better for the family by levelling it but the bad weather and lack of contractors prolonged the job. Nevertheless, I find the tenants lost amenities or facilities and are entitled to a rebate of rent pursuant to section 27 of the Act. 15% rebate from March to September totals (\$1900 x 15% = \$285 x 7 = \$1995). I find the tenant's evidence more credible that they did not bring the orange fencing so I find this is part of the debris that must be removed by the landlord as ordered below.

In addition, I find the loss of use of access from their deck and lack of stairs and a safe railing contravenes section 32 of the Act. I find this loss of use has occurred since June 2017. I find them entitled to a further 10% rebate of rent from June to September 2017 to compensate them for loss of use of their deck for a total of \$760 (4 x \$190). I find them also entitled to an Order to Repair the deck and a continuing rebate of 10% until it is done.

Conclusion:

I find the tenant is entitled to a monetary order as calculated below and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rebate of 15% for loss of use of yards	1995.00
Rebate of 10% for loss of use of deck access to yard	190.00
Filing fee	100.00
Total Monetary Order to Tenant	2285.00

I HEREBY ORDER THAT THE tenant may enforce this amount as a monetary order or take it as a rebate of future rent.

I HEREBY ORDER the tenant to clean up the dog poop in the backyard so the landlord's agents may access it to install a dog run and put down more seed.

I HEREBY ORDER the landlord to

- 1. Install a dog run and put down more seed as soon as possible.**
- 2. Remove all debris, old wood and fencing from the backyard to make it safe**
- 3. Repair the back deck, steps and railing in a safe fashion to allow access to the back yard.**

AS SOON AS THE TENANT CLEANS UP THE DOG POOP IN THE BACK YARD, I HEREBY ORDER THE LANDLORD TO COMPLETE ITEMS 1-3 BY LATEST OCTOBER 1, 2017. SHOULD HE NOT DO SO, I HEREBY ORDER THAT THE TENANT'S RENT WILL BE REDUCED BY 15% (\$285 A MONTH) STARTING OCTOBER 1, 2017 AND UNTIL THE LANDLORD COMPLIES.

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 06, 2017

Residential Tenancy Branch