



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREENAWAY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDL-S, MNRL-S, FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (Act). The landlord applied for a monetary order for money owed or compensation for alleged damage by the tenant and for loss of rent revenue and for recovery of the filing fee paid for the application.

The landlord's agent (landlord) attended the telephone conference call hearing; the tenant did not attend.

The landlord testified that they served the tenant with their Application for Dispute Resolution and Notice of Hearing by registered mail to the forwarding address provided by the tenant. The landlord provided the Canada Post tracking number of the registered mail and evidence that the tenant failed to claim the package. The tracking number is listed on the style of cause page of this Decision.

Based upon the submissions of the landlord, I find the tenant was served notice of this hearing in a manner complying with section 89(1) of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present her evidence orally and to refer to relevant documentary and photographic evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to an order for monetary compensation and to recovery of the filing fee paid for this application?

Background and Evidence

The written tenancy agreement submitted by the landlord shows that this tenancy began on May 1, 2019, for a fixed term ending on April 30, 2020, that monthly rent was \$1,195.00, and that the tenant paid a security deposit of \$597.50.

The landlord submitted that the tenant was served with a One Month Notice to End Tenancy for Cause (Notice) on August 21, 2019, for an effective move-out date of September 30, 2019, due to the damage he was doing to the property.

The tenant vacated the rental unit and the landlord has retained the tenant's security deposit, having made this claim against it.

The landlord's monetary claim is as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Removal of damaged tree	\$250.00
2. Rebuild and repair yard	\$2,400.00
3. Replace lawn	\$1,100.00
TOTAL	\$3,750.00

I note that the landlord's original monetary claim was \$10,390.00; however, as she amended her monetary claim to substantially reduce it, I accepted the amendment.

The landlord's relevant evidence included the Notice, the written tenancy agreement, photos of the damage to the property, text messages to the tenant, notices to the tenant, and receipts, quotes, and invoices.

In support of their application, the landlord submitted that the tenant damaged the yard and property of the rental unit while he lived there. In explanation, the landlord said that

the tenant carried out extensive, unauthorized yard work, damaging and exposing a root system.

This work caused one tree to have to be removed, and soil erosion, which will have to be remedied in the spring. The landlord submitted their arborist's report shows that the tree should be removed and the soil be re-built in order to save other trees.

The tenant also replaced a professionally built, wooden planter with large, unsecured rocks without permission from the owner. The landlord submitted that the tenant also removed the fence and planters which acted as a safety barrier to a steep drop past the fence line. The landlord submitted the tenant also removed grass and flowers.

The landlord submitted that they attempted to meet with the tenant to resolve the issues, but the tenant had outbursts of anger and unwillingness to engage in positive dialogue.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that occurs as a result of their actions or neglect, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Section 37 of the Act requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear. Under the Act, the residential property is defined as the rental unit and common areas and any other structures located on the parcel.

In the case before me, I accept the undisputed oral, documentary, and photographic evidence of the landlord that the tenant's unauthorized actions on the residential property caused damage well beyond reasonable wear and tear. I find the landlord submitted sufficient evidence that one tree had to be removed and other trees' root system were damaged, all by the tenant, so that the yard and soil has or will be required to be re-built.

I have examined the landlord's evidence and find their costs and claims to be reasonable under the circumstances.

As a result, I find the landlord is entitled to a monetary award of \$3,750.00 as claimed.

I grant the landlord recovery of their filing fee of \$100.00, due to their successful application and pursuant to section 72(1) of the Act.

Due to the above, I grant the landlord a monetary award of \$3,850.00, comprised of \$3,750.00 for damage to the landlord's yard, soil and trees, and the filing fee of \$100.00.

At the landlord's request, I direct them to retain the tenant's security deposit of \$597.50 in partial satisfaction of their monetary award of \$3,850.00.

I grant the landlord a final, legally binding monetary order pursuant to section 67 of the Act for the balance due in the amount of \$3,252.50.

Should the tenant fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenant is advised that costs of such enforcement are subject to recovery from the tenant.

Conclusion

The landlord's application for monetary compensation is granted, they have been authorized to retain the tenant's security deposit of \$597.50, and they have been awarded a monetary order for the balance due, in the amount of \$3,252.50.

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: January 10, 2020