

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for damage or loss under the *Residential Tenancy Act*.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on April 9, 2009. Mail receipt numbers were provided in the Tenant's verbal testimony. The Landlord was deemed to be served the hearing documents on April 14, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

The Tenant appeared, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

The Landlord did not attend the hearing despite being served with the hearing documents in accordance with the *Act*.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act*?

Background and Evidence

The Tenant lived at the rental unit for approximately 11 years before ending the tenancy effective June 30, 2008. The Tenant advised that the Landlord had returned her security deposit and interest.

The Tenant testified that she had pre-scheduled her move-out reserving an elevator and hired the moving company for 1:00 p.m. on June 30, 2008. The Tenant advised that there were 3 elevators in her building but that one elevator had been broken down for almost one month leaving only two available for moves and residential use.

The Tenant argued that approximately ½ hour into her move the elevator she was using broke down and the building manager advised the Tenant that she could not use the 1 remaining elevator for a move because they had to keep at least 1 elevator for residential use. The Tenant stated that her movers were able to take “small hand things” onto the 1 remaining elevator while they were waiting for the reserved elevator to be repaired. The Tenant advised that after waiting about 2 ½ hours the movers offered to postpone the Tenant’s move until the next day when the elevator would be repaired but that the Tenant would be responsible for paying for the movers for the 2 ½ hours they were waiting. The Tenant advised that she chose not to postpone her move as she had arrangements made to use the elevator at her new rental unit and requested that the movers wait until the elevator was repaired.

The Tenant claims that her move took 8 ½ hours, that the movers were without the use of the reserved elevator for approximately 3 hours (between 1:30 pm to 4:30 pm), and that had the 3rd elevator not been broken down for almost 1 month, they would have been able to use it when the reserved elevator broke.

Analysis

I find that in order to justify payment of damages or loss under section 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the Tenant's right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenant and corroborated by her documentary evidence.

Section 32 of the *Act* stipulates that a Landlord is obligated to repair and maintain the residential property. I find that by failing to have all three elevators operational the Landlord caused the Tenant to suffer a loss when the elevator she had pre-scheduled broke down and her movers were delayed 3 hours. Based on the aforementioned I find that the Tenant has proven the test for damages as listed above and I hereby approve her monetary claim in the amount of \$297.92. (\$844.12 divided by 8.5 hours x 3 hours)

Conclusion

I HEREBY FIND in favor of the Tenant's monetary claim. A copy of the Tenant's decision will be accompanied by a Monetary Order for \$297.92. The order must be served on the respondent Landlord and is enforceable through the Provincial Court 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: July 06, 2009.

Dispute Resolution Officer