

DECISION

Dispute Codes MNDC OLC ERP

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and to obtain Orders to have the Landlord comply with the Act and make emergency repairs.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the desk person by the Tenant on March 2, 2009.

The Tenant and his Advocate appeared, were provided the opportunity to present their evidence orally, in writing, and in documentary form. No one attended on behalf of the Landlord despite being served with notice of today's hearing in accordance with the Act.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement pursuant to section 67 of the *Residential Tenancy Act*?

Is the Tenant entitled to Orders to have the Landlord comply with the Act and make emergency repairs under sections 33 and 62 of the *Residential Tenancy Act*?

Background and Evidence

The single room occupancy (SRO) month to month tenancy began near the end of October 2008 for the monthly rent of \$375.00. Rent is paid directly to the Landlord by the Ministry of Housing and Social Development and the Tenant paid a security deposit of \$187.50 in October 2008.

The Tenant referred to his photo and documentary evidence in support of his testimony that the Landlord did not provide the Tenant with advance notice that construction would be completed on the building which would require workers to enter the Tenant's suite and would leave a window open and the unit unsecured.

The Tenant testified that he left his rental unit secured, for a few days on approximately February 16, 2010 and when he returned and entered his rental unit on February 20, 2010, an intruder was leaving his unit through the window. The Tenant argued construction workers constructed a scaffold just outside his window and the scaffold extended into the Tenant's rental unit inhibiting the window to be closed and secured. The Tenant stated that upon entering his room he noticed his fridge door open, his possessions have been ruffled through, and several items were missing such as food, clothing, tools, and his DVD player.

The Tenant argued that he immediately went down to the front desk and reported the problem to the clerk who said he would contact the manager to find out what could be done. The Tenant stated that the desk clerk told him that he contacted the manager who said it was her day off and she would deal with the problem when she returned on Monday February 22, 2010.

The Tenant advised that on approximately February 21, 2010 he provided the front desk clerk with a list of items that had been taken from his room and that he moved the rest of his valuable possessions to his friends' homes until he could get the issue resolved.

The Tenant testified that he kept asking his Landlord and front desk personnel when the pipes were going to be removed from his room and it was not until March 31, 2010 that his Landlord offered the Tenant the opportunity to occupy unit # 30. The Tenant has since moved all of his possessions into unit # 30 and continues to occupy this unit.

The Tenant is seeking compensation in the amount of \$500.00 which is comprised of the loss of use of his rental unit for the period of February 20, 2010 to March 31, 2010, plus the value of the stolen food, clothing, tools, and DVD player.

Analysis

All of the testimony and documentary evidence was carefully considered.

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

The evidence supports the Landlord did not comply with sections 32 and 33 of the Act which provide that a landlord is required to provide and maintain residential property in a state of repair that complies with health, safety, and housing standards required by law and that a landlord **must** complete emergency repairs that are necessary for the health or safety of anyone or for the preservation or use of residential property. Based on the aforementioned I find the Tenant has proven the test for damage or loss, as listed above and I hereby approve their claim in the amount of \$500.00.

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 **\$500.00**. The order must be served on the respondent and is enforceable through the Provincial Court and enforced as an order of that Court.

The Landlord is HEREBY ORDERED to comply with the *Residential Tenancy Act*, pursuant to section 62(3) of the Act.

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: April 15, 2010.

Dispute Resolution Officer