



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution, seeking monetary compensation for damages at the rental unit alleged to have been done by the Tenant, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

This is the second hearing involving these parties. In the first hearing, involving the Tenant's Application for Dispute Resolution held on March 31, 2010, the Landlord was found to have illegally evicted the Tenant and ordered to repay rent and a portion of the security deposit.

Issues(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

The Landlord is claiming against the Tenant for damages done to the exterior door at the rental unit, which the Landlord claims the Tenant and his friends caused.

The Landlord testified that sometime in November of 2009, the Tenant and his friends had a fight and the door was damaged. The Landlord then testified he believed this occurred on November 27, 2009.

The Landlord testified he has disabilities and is not able to walk. He says he went to the rental unit the next day and saw the damage to the door. The Landlord testified he then entered the hospital in Vancouver for an extended stay. While he was away, he did not have an Agent, however, he claims a friend was looking at the unit every so often.

The Landlord testified he did not know the exact date the door was repaired. After looking at his receipts he testified the door was ordered on January 19, 2010.

I note that throughout the hearing the Landlord was very vague with the dates of events he was recalling.

The Landlord also testified that he heard the Tenant and his friend fighting the day the door was damaged and saw them in the front of the yard.

In evidence the Landlord submitted photographs of the door, which appears to have been struck several times by a small round object, possibly the head of a hammer. The door is cracked and the screen around the window is bent, possibly by someone trying to remove the screen and or window from the door.

The Tenant testified he had moved out of the rental unit on November 27, 2009, and on the day he moved out the door was not damaged. The Tenant denied damaging the door or having any knowledge of who damaged it.

The Tenant testified there had been a break in at the rental unit in October of 2009, when the Tenant had some items, including a video game console, stolen from the unit. The Tenant testified the door was damaged at that time, however, his father came over and used some glue to repair the door.

In evidence the Tenant provided a copy of the 10 day Notice to End Tenancy issued to him by the Landlord, which was dealt with at an earlier hearing. The Landlord and the Tenant agreed the Notice was served on him on November 18, 2009. Attached to the Notice is a letter from the Landlord which states, "Re-damage to basement entry door done by your friends. Witness available who saw this happening." [Reproduced as written.]

In reply to this evidence during the hearing, the Landlord admitted no one witnessed the door being damaged.

The Advocate for the Tenant, who is the Tenant's father, testified that he helped his son move and his son had vacated the rental unit completely by November 27, 2009. He

further testified that he returned to the rental unit on November 29, 2009, to return the key to the Landlord. He testified that on November 29, 2010, the door locks had been changed and he was unable to use the Tenant's key to gain entry to the unit. He further testified that on that date there were no large dents in the door, as shown in the Landlord's pictures.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find that the Landlord's Application must be dismissed.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss here the Landlord, has the burden of proof to establish their claim on the civil standard that is, based on a balance of probabilities.

To prove a loss and have the other party, here the Tenant, pay for the loss requires the Landlord to have proven four different elements:

First, proof that the damage or loss exists; secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement; thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage; and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this particular case, while I find the Landlord has established the door was damaged, I find the Landlord has insufficient evidence to prove the Tenant's actions or neglect led to the door being damaged. Simply put, the Landlord has not proven the Tenant or his invited guests damaged the door.

Therefore, I must dismiss the Landlord's claim against the Tenant.

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: August 11, 2010.

Dispute Resolution Officer