



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: *MNDC, RP, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for compensation for loss under the *Act* and for the filing fee. The tenant also applied for an order for repairs to be carried out to the rental unit. During the hearing the tenant stated that all repairs were done and therefore this hearing only dealt with the tenant's monetary claim for the repair of his television (TV).

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

At the start of the hearing, the tenant testified that the damage to his TV actually happened on August 09, 2010 and not on August 06, 2010 as reported several times in his documentary evidence.

Issues to be decided

Was the damage to the TV caused by negligence on the landlord's part? Is the tenant entitled to the cost of getting the TV repaired? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on July 01, 2009. Rent is \$1,170.00 per month payable on the first of each month. The rental unit consists of an apartment which is located on the ground floor of the building. Through summer, the landlord was conducting repairs to the water drainage system in the area of the patio, attached to the rental unit. The area was dug up and concrete pavers were installed. The work was finished on July 28, 2010 and on August 05, 2010 the landlord visited the unit to investigate a complaint of a leak.

The landlord lifted a concrete paver located in the corner of the patio and found a puddle of water which he removed. He also noticed a hole in the membrane and informed the contractor. The contractor had it sealed on August 06 and did not re set the paver. On August 09, the landlord visited the site and found a note written by the tenant to the workers informing them that he would be complaining to management about the damage to his TV and the sliding door. The landlord used a crowbar to slide the paver into its spot. The landlord stated that he did not lift the concrete paver as it weighs 80 pounds.

The tenant stated that as he was leaving for work on August 09, he heard someone come onto the patio, but did not see who it was. At around noon, the co tenant informed him that the TV face was fractured. Upon his return from work he found a crystal cube under the coffee table. This cube was usually placed on a shelf above the TV. The tenant also noticed that the sliding door to the patio was wobbly and the handle was broken. The tenant agreed that he had written the note and placed it on the concrete paver, but disputed the date that he put it there.

The tenant wrote a letter to the landlord to report the damage to the TV and the sliding door. The letter is dated August 10, 2010 and states that the damage occurred on August 06, 2010. The tenant states that dropping the paver caused the crystal cube to fall and damage the TV.

The landlord stated that the damage to the door was fixed prior to August 14. He was unsure of which date as his invoice was dated August 14, 2010.

The landlord's witness who is the resident manager stated that on the weekend of August 07 and August 08, the tenant reported the damage to her during a conversation. The tenant agreed that he spoke with the resident manager but stated that he did so on the following weekend. The landlord argued that the sliding door was already fixed by the following weekend and therefore the tenant's version was incorrect.

The tenant also filed photographs showing the patio area, the sliding door and the damaged TV. The tenant pointed out one paver was chipped and stated that this chip occurred when the paver was dropped. The photograph shows other pavers that also appear similarly chipped. The tenant was not sure of the date that he took the photographs.

The tenant is claiming \$1,152.08 for the cost of repair of the TV.

Analysis

It must be emphasized that in order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof.

The tenant's verbal testimony conflicts with his documentary evidence with regard to the sequence of events. In addition, I find that the landlord would have no reason to pick up a heavy concrete paver when it would be easier to slide the paver in with the help of a crow bar. The door handle that was damaged is located approximately waist high and it is unlikely to have been damaged by a paver unless the paver was lifted to that height. I prefer the landlord's evidence regarding the sequence of events which is backed up by the contractor's statement. Based on the sworn testimony of both parties, I find that the tenant has not proven that the landlord was responsible for the damage to the TV.

Conclusion

The tenant's application is dismissed. The tenant must bear the cost of filing his application.

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: November 18, 2010.

Dispute Resolution Officer