



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act. The tenant was seeking compensation for loss of possessions that occurred after a fire in the complex that was due to no fault of the tenant.

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The tenant was seeking to receive a monetary order for \$15,000.00 representing damages including moving costs. The issues to be determined based on the testimony and the evidence is whether the tenant is entitled to monetary compensation pursuant to section 7 of the Act for damages or loss stemming from a violation of the Act by the landlord.

The burden of proof is on the applicant tenant.

Background and Evidence

The parties testified that the tenancy began on May 1, 2007 and the current rent was \$815.00. A security deposit of \$392.50 was paid by the tenant. No copy of the written tenancy agreement was in evidence.

The tenant testified that on July 27, 2010 a tragic fire occurred in the complex where the rental unit was located, forcing the tenant and other residents in the building to vacate immediately without their possessions. The tenant testified that, after the blaze was extinguished and it was evident that the tenant's rental unit was still intact, the tenants made persistent efforts to arrange to retrieve their belongings, which were evidently not destroyed by the fire. The tenant testified that they were repeatedly told that an opportunity would be available as soon as the restoration company in charge of the site gave clearance that it was safe to do so. The tenant stated they were told at that time

that they had no right to enter for safety reasons. However, on August 13, 2010, when they went to pick up their security deposit refund from the landlord, the tenants were given new reason to hope that they would finally be given a chance to retrieve their belongings in the very near future. The tenant testified that the landlord told them to wait for a phone call regarding the date and time to pick up their items. According to the tenant, they waited over three weeks without getting the permission to go and pick up their property. During this period, they became aware that the building was slated for demolition and they went to the site repeatedly to monitor the what was happening and make inquiries to get updated information. They were still not permitted on the site, but the security personnel took the tenant's contact information.

The tenant testified that, on September 9, 2010, to their horror, they discovered that the portion of the building where their apartment was situated was completely gone, with only one exposed wall where their wedding photo remained. The tenant testified that they were devastated and felt betrayed by the landlord and all of the prior assurances that gave them false hope. The tenant is claiming the value of the items lost in the amount of \$15,000.00.

Analysis

In regards to an Applicant's right to claim damages from another party, Section 7 of the Act states that, if a tenant or a landlord does not comply with this Act, the regulations or the tenancy agreement, 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.

I find that in order to justify payment of damages under section 67, the applicant would be required to prove that the other party did not comply with the Act or tenancy agreement and that this non-compliance resulted in costs or losses, such as a reduction in services, 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 bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- a. Proof that the damage or loss exists,
- b. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

- c. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- d. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the onus was on the claimant/ tenant, to prove the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Based on the evidence and testimony of the parties, I find that the tenant did suffer a substantial loss through no fault of their own. However, I find that the evidence offered in support of this claim failed to satisfy element 'b' of the test for damages in that the tenant did not sufficiently prove that the landlord had violated the Act resulting in the claimed loss.

Given the above, I find that the tenant's monetary claim for compensation has no merit under the Act, and must therefore be dismissed.

Conclusion

Based on the testimony and evidence presented during these proceedings, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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 2011.

Residential Tenancy Branch