



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the tenants entitled to a Monetary Order, and if so for what amount?

Are the tenants entitled to recover the filing fee?

Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on May 1st, 2010 and ended on July 30th, 2011. The rent was \$795.00 per month.

The tenant testified that shortly after moving in she addressed concerns with water leaking from the upstairs balcony and its deteriorating condition. She stated that the then resident manager told her that the problem would be addressed but that nothing

happened. The tenant said that a new resident manager took over and that she re-addressed the same concerns. She also said that by that time the upstairs dog's urine was leaking through a hole, which provided her with limited use of her own balcony.

In her documentary evidence, the tenant provided 19 photographs in support of her claim of the deteriorating condition of the balcony. The tenant also provided a copy of a letter dated May 25th, 2010, addressed to the resident manager concerning in part the condition of the support beams of the upstairs balcony, the hole, and the dog's urine.

In her application for dispute resolution, the tenant submitted a claim for rent reduction due to the loss of use of the balcony as follows:

- 12% reduction over 14 months ($\$95.40 \times 14$): \$1335.60.

The landlord provided a written submission wherein she agreed that, according to the photographs, the balcony required some cleaning and polishing, but that they show no proof of structural damage. In that same letter, the landlord states that she has no records that the tenants submitted any written requests for maintenance of the balcony.

The landlord's agent testified that she took over as resident manager in December 2010. She stated that the tenant approached her about the urine problem and the upstairs dog, that she discussed it with the dog's owners, and that she heard nothing more from the tenants about the condition of their balcony.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. When these requirements are

not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the tenant to prove her claim against the landlord.

The tenant's photographs indicate a degree of deterioration to the wood of what is presumed to be the upstairs balcony. Although I disagree with the landlord's written submission that there is no proof of structural damage, I find insufficient evidence to establish that the structural damage in question represented a health and safety concern, and a loss of use of the balcony as alleged by the tenants. The tenant provided no material evidence from an authoritative source, such as a contractor's assessment or inspection, to substantiate her claim and establish that the deterioration was in fact a safety and health concern. Further, the landlord stated that the tenants were often seen on the balcony. I also found contradictory evidence on the tenant's part; in the details portion of her application for dispute resolution, she states that she lost the use of the balcony; however during her testimony she stated that the use of the balcony was limited, without further qualifying what she meant by "limited".

Section 7(2) of the *Act* states in part that a party who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss. In that regard I note that the tenants filed their application some three months after the tenancy ended. A remedy for the tenants would have been to seek assistance through dispute resolution if the landlord failed to attend to the issue as it occurred.

I do acknowledge, however that the tenant did provide a written letter to the resident manager concerning the balcony, and I accept that no action was taken by the landlord. The landlord is responsible for the representations made by its resident manager, and for the manner in which the resident manager governs tenancies in accordance with the *Act*. As such I find that the landlord failed to investigate the problem further.

For the above noted reasons, in the absence of more substantive evidence to establish an actual degree of loss, I award the tenants a nominal compensation of \$200.00 for the inconvenience associated with the dog's urine leaking onto their balcony.

Conclusion

The tenant established a claim of \$200.00. Since she was partially successful, she is entitled to partial recovery of the filing fee and pursuant to Section 67 of the Act, I grant the tenant a monetary order for the sum of \$225.00.

This Order may be registered in the Small Claims Court and enforced 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: January 26, 2012.

Residential Tenancy Branch