



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties.

The Landlord filed for a monetary order for alleged damage to or cleaning of the rental unit, for unpaid rent, to keep the security deposit in partial satisfaction of the claim, for a monetary order for money owed or compensation under the Act or tenancy agreement and to recover the filing fee for the Application.

The Tenant filed for a monetary order for money owed or compensation under the Act or tenancy agreement, for return of double the security deposit under section 38 of the Act, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided 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 evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Matter

During the course of the hearing the Tenant requested leave to submit evidence only to the Arbitrator and not to the other party. The Tenant explained this was medical evidence about him, which he did not want the Landlord to see. I did not allow this request. I explained to the Tenant that to allow evidence from one party, to the exclusion of the other, would be a breach of the fundamental principles of administrative law fairness. I explained to the Tenant that both parties to the proceeding have the right to provide evidence to the other party and the branch, and both parties must be given an opportunity to reply to the evidence.

Issue(s) to be Decided

Is the Landlord entitled to the relief sought?

Is the Tenant entitled to return of the security deposit or other monetary compensation?

Background and Evidence

This tenancy began on June 1, 2010, with the parties entering into a written tenancy agreement. The agreement called for rent of \$795.00 per month, payable on the first day of the month. The Tenant paid a security deposit of \$397.50 on May 25, 2010.

The parties agreed that the Landlord had changed Agents and property managers during the course of the tenancy.

The parties agreed that in October of 2012, there was a fire in the building where the rental unit is located. According to the Agent for the Landlord the fire was on the floor above the subject rental unit.

The parties agree the rental unit affected by the fire was located three units down and across the hall from the subject rental unit, on the same floor. The parties also agree there was damage from the fire and water in other locations in the building, but there was no fire or water damage to the subject rental unit.

In December of 2012, the Tenant gave the Landlord a one month Notice to End Tenancy, to be effective at the end of January 2013.

The Landlord's Claim

On January 2, 2013, the Tenant paid the Landlord \$397.50 in rent and informed the Agent for the Landlord they could use the security deposit to pay the balance of the rent due for January 2013.

The Agent for the Landlord scheduled an outgoing condition inspection report for the subject rental unit. The Tenant attended this on January 31, 2013; however, the Tenant refused to sign the outgoing condition inspection report. The Tenant testified he refused to sign because he was suffering an emotional breakdown, due to bad news he received about the child in hospital of a friend. He did not want to sign the outgoing condition inspection report and asked the Agent to do this the next day.

The Agent for the Landlord issued the Tenant a form entitled R.T.B. 22: Notice of Final Opportunity to Schedule a Condition Inspection. In the form the Agent for the Landlord requested the Tenant attend on February 2, 2013, at 1:00 p.m.

The Tenant testified he did not attend this second opportunity as he had already moved everything out of the rental unit and there was nothing to attend for.

The Landlord claims the Tenant failed to pay rent of \$397.50 for January of 2013.

The Landlord claims \$58.00 for cleaning behind and under the fridge, and for the oven and stove. The Landlord also claims the Tenant did not have the carpets professionally cleaned and claims \$145.60.

The Landlord did not submit receipts or invoices for the fridge and stove cleaning or the carpet cleaning.

The Tenant's witness testified that she helped the Tenant when he was cleaning the rental unit.

The Tenant's Claim

The Tenant claims that he lost quiet enjoyment of the rental unit during the time the Landlord was repairing the affected rental unit and areas of the building.

The Tenant's witness testified she had known the Tenant for about three years. She testified she noticed an extreme change in his health over the last few months of the tenancy. She testified he seemed to have trouble breathing and was having anxiety attacks about not being able to breathe.

The Tenant testified that immediately following the fire in the building he was put up in a hotel for three days. He testified he returned to the rental unit after the fire department approved people going back into the building to live.

The Tenant testified he had a hard time breathing in the building and alleged there was asbestos being removed and mould found in a lot of areas. He testified there was a lot of dust in the building due to the restoration work being done. He testified he developed a cough.

The Tenant testified he saw a doctor a couple of times for this. In evidence the Tenant provided a letter from the local health authority indicating he had been to the emergency room on December 20, 2012, and he had reported feeling unwell for two days, and on January 26, 2013, he returned to emergency for a persistent cough.

The Tenant also provided in evidence copies of what ostensibly appear to be a doctor's unsigned, clinical notes. On January 8, 2013, there is a note on note, "Cough x 2 [indecipherable writing]". On January 17, 2013, there is an entry that says, "still cough".

I note the clinical record provided makes reference to other issues; however, I found that most of the clinical notes were not relevant to the Tenant's claims or were not legible in any event. I also note there is nothing to indicate the name of the doctor who apparently made these notes.

The Tenant alleges his health was compromised and that the painting and dust in the building areas adversely affected his health.

The Tenant testified he accepted that the fire was not caused through any fault of the Landlord. He testified that the restoration work went on for four months and he could sleep during the day due to the noise. The Tenant testified he works a night shift and has to sleep during the day, and the noise disturbed him often.

The Tenant also claimed that due to the ongoing work he did not think it was safe for his daughter to visit him at the rental unit. He testified he did not inform the Landlord of this at the time, as it was just a father's concern for his child.

The Tenant requested the return of all the rent paid during the final four months of the tenancy and for the return of his security deposit, in the total amount of \$3,982.50.

In reply to the Tenant's claims, the Agent for the Landlord testified that the occupants of the building were not allowed to return to the building until that was approved by the fire department.

The Agent for the Landlord testified that all of the work performed in the remediation of the building was conducted to WorkSafe B.C. standards. For example, any area requiring it was wrapped up and a double entry system was used to prevent contamination of other parts of the building.

The Agent testified that any renters in the building who wanted to move out were allowed to leave.

Both the Tenant and the Agent for the Landlord agreed that the Tenant never made a written complaint to the Agent or the Landlord about his loss of quiet enjoyment.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find the following.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on both parties to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the claimant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's Outcome

In this instance, I find the Tenant failed to pay the rent due for January of 2013. The Tenant was not able to use the security deposit for a half of a month of rent without the Landlord's written permission to do so. The Landlord had not given this permission in writing. The Tenant also had no right or authority to deduct a half of a month's rent from his payment. I find the Tenant owes the Landlord ½ of a months' rent.

I dismiss all the other claims of the Landlord. I find the Landlord failed to prove the value of the other losses claimed, as they did not provide the receipts or invoices for the amounts claimed.

Tenant's Outcome

I dismiss the Tenant's claim for return of the security deposit. By failing to participate in the outgoing condition inspection report the Tenant extinguished his right to recover the deposit, pursuant to section 36 of the *Act*. I find the Landlord acted in accordance with the *Act* in handling the opportunities for an outgoing condition inspection report.

I dismiss all the other claims of the Tenant. I found the Tenant has failed to prove the Landlord violated the *Act* or the tenancy agreement. While the Tenant is entitled to quiet enjoyment of the rental unit, the Landlord was not in breach of the *Act* or the tenancy agreement when making repairs to the building, as these were required due to the fire.

Under section 32 of the *Act*, the Landlord is required to maintain the building in a state of decoration and repair that complies with the health, safety and housing standards required by law and to make it suitable for occupation. Here the Landlord was complying with this section of the *Act*, by making repairs to the building which were necessitated by the fire. I accept that the Tenant suffered some inconvenience due to the remediation work; however, I do not find the Landlord breached the *Act* or tenancy agreement while performing it.

For these reasons, I dismiss the Application of the Tenant without leave to reapply.

I find the Landlord has established a claim for one ½ month of rent and due to the limited success of the Landlord, I grant the Landlord \$25.00 towards the filing fee for the Application, for a total claim of **\$422.50**.

I order the Landlord may retain the security deposit of \$397.50 in partial satisfaction of the claim, and I grant the Landlord a monetary order for the balance due of **\$25.00**. This order must be served on the Tenant and may be filed and enforced through the Provincial Court.

Conclusion

The Tenant's claim is dismissed, as he failed to prove the Landlord has breached the Act or tenancy agreement.

The Landlord has established a portion of their monetary claim. I order the Landlord may retain the security deposit in partial satisfaction of the claim, and grant the Landlord a monetary order for the balance due.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: May 27, 2013

Residential Tenancy Branch