



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Triple V Holdings
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent, his two witnesses and the tenant.

At the outset of the hearing the tenant confirmed that she would be vacating the rental unit the day of the hearing. As such, the landlord identified that he no longer sought an order of possession and wished to pursue the monetary claim. I amend the landlord's Application to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for damage to the residential property; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in October 2013 as a month to month tenancy for the monthly rent of \$700.00 due on the 1st of each month with a security deposit of \$350.00 paid.

The landlord has submitted written statements and photographic evidence claiming for the cost of repairs to the walls in a common area (\$280.00) and security glass at the front entrance (\$482.72).

The landlord submits that the tenant's son had, on November 27, 2013, had several friends over who throughout the course of the even caused to be broken the security glass at the front door. The landlord also submits that on December 7, 2013 the

tenant's son again had friends over who caused damaged to the walls outside of unit 10 and unit 15.

The landlord's witness GS testified that although he was unsure of the exact date one night he heard the tenant's son and his friends partying in their rental unit and that there thumping on the walls. The witness testified he believed this occurred in January 2014. He states that that next morning he noticed that there were holes in the walls and the window from the side door was broken.

The landlord's witness HP testified that on a day in December 2013 or January 2014 there was a big party in the tenant's rental unit and that 2 holes were punched into walls and the windows were broken. The witness testified that it had to be the tenant's son and his friends who caused this damage. This witness also testified that the damage occurred on the same day.

While the tenant acknowledges that her son did have friends over from time to time she adamantly denies that her son or his friends had anything to do with the damages to the property. She states that she is very close to her son and if his friends had caused any damage he would have told her.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(3) of the *Act* requires a tenant to repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

As there is not dispute from the tenant that the damage to residential property occurred I accept from the evidence before that the property was damaged. However, as the tenant disputes the landlord's testimony that it was her son and his friends who caused the damage it is incumbent upon the landlord to provide additional evidence or witness testimony.

While the landlord specified two distinct dates that the damage occurred (November 27, 2013 – window and December 7, 2013 – walls) and his witnesses both testified that the damage occurred on the same night I find the witness' testimony to be unreliable.

In addition, I find that the windows had no direct knowledge that the damage was caused by the tenant's son or his friends but rather they submit that it had to be the son or his friends because it could not have been anyone else.

As such, I find the landlord has failed to provide sufficient evidence to establish that the tenant or her son is responsible for the damage to the rental property.

Conclusion

Based on the above, I dismiss the landlord's Application in its entirety.

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: February 7, 2014

Residential Tenancy Branch

