



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Entre Nous Femmes Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, RR

Introduction

This is an application filed by the tenant for a monetary order for money owed or compensation for damage or loss, to obtain an order to have the landlord make repairs to the unit, site or property and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary, I am satisfied that both parties have been properly served.

During the hearing, the tenant's advocate clarified that the tenant is not seeking a reduction in rent as applied for on the application as she states that it was a clerical error making that selection. The tenant's advocate has withdrawn this portion of the application. As such, no further action is required.

It was also clarified with the tenant that the recovery of the cost of registered mail was not recoverable. Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order for repairs?

Background and Evidence

This tenancy began on June 1, 2013 on a month to month basis as shown by the submitted copy of the signed tenancy agreement dated May 13, 2013. The monthly rent is \$644.00 payable on the 1st of each month.

The tenant seeks a monetary claim of \$208.15 to replace spoiled food due to a refrigerator that has failed twice causing the food to spoil. The tenant states that he notified the landlord by attempting to call the emergency contact number to request the landlord fix the refrigerator the next day. The tenant states that the landlord made repairs to the refrigerator several days later. The tenant also states that the refrigerator failed a second time for which he again tried to notify the landlord. The landlord disputes this claim stating that the tenant has never contacted the landlord in a timely fashion to repair the refrigerator or that the tenant took any reasonable steps to mitigate by moving the stored food into a community refrigerator in the interim. The landlord has provided copies of the emergency contact call logs showing that the tenant only made one call on November 16, 2013 regarding lost keys. The tenant's advocate states that an absence of the tenant's call on the log is not an indication that the tenant did not try to notify the landlord.

The tenant also seeks to have the cost of \$126.00 for lock service reduced as the tenant does not believe this is a direct cost related to the key replacement. The tenant states that he lost his keys to the rental property and called the landlord's emergency contact number. The tenant state that this is an unreasonable fee charged for providing him for the replacement of lost keys. The landlord disputes this stating that the cost is as per the lock smith's invoice as provided for exactly \$126.00. The landlord states that this is the cost imposed by the lock smith for a call out service. The invoice from the lock smith shows that services were for call out to attend and open the tenant's door, provide replacement keys for the suite, main door and mail box. The tenant argues that the lock smith was already on site for a personal matter and should not be charged for the call out service.

The tenant seeks that the landlord paint and clean the carpets in the suite. The tenant states that when he first moved in the suite required carpet cleaning and painting which the tenant states that the landlord promised that she would have done. The landlord disputes this stating that when the tenant moved into the suite, that it was in acceptable condition. The tenant states that these two issues were written on the condition inspection report for the move-in. The landlord disputes this. Neither party provided a copy of the condition inspection report for the move-in.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find on a balance of probabilities that the tenant has failed in his application for monetary compensation. Although there is no dispute that the loss (food spoilage) occurred, the tenant has failed to provide sufficient evidence to satisfy me that the loss occurred as a result of any actions or neglect of the landlord. The tenant has also failed to provide proof of the actual amount required for compensation as he states that the amounts were obtained by going to the store to get comparison prices even though the tenant states that he did buy and replace the items. No receipts were submitted. I also find that the tenant failed to mitigate any possible losses as he was aware that the refrigerator was malfunctioning yet did not remove the food items for storage elsewhere. The tenant's monetary claim is dismissed.

I find based upon the evidence provided that the charge of \$126.00 for call out lock services to be reasonable and a direct cost as a result of the tenant losing his keys and requiring a lock smith to attend and provide replacement keys. The cost is associated to the call out for the lock smith to attend the rental as opposed to a charge for the cutting of new keys only. On this basis, I find that the tenant has failed to establish a claim for the reduction of this charge by the landlord. This portion of the tenant's application is dismissed.

On the issue of painting and carpet cleaning, I find that the tenant has failed. The onus or burden of proof lies with the party who is making the claim. In this case it is the tenant. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. This portion of the claim for repairs of painting and carpet cleaning are dismissed.

Conclusion

The tenant's application is dismissed.

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: May 30, 2014

Residential Tenancy Branch

