



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding C & L Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order for damage to the unit, site or property and a for money owed or compensation for damage or loss suffered under the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on June 1, 2014 and is ongoing. The landlord stated that on September 24, 2014 he noticed an oily trail of tire tracks that originated from the grate over the sump. The landlord stated that he traced an oily drip trail to locker 42. The landlord stated that inside the locker was a pan used to catch oil and that it had fresh drippings on it. The landlord stated that he had two witnesses observe the track and provided a statement. The landlord stated that he confronted the subject tenant of this hearing as he is assigned locker 42. The landlord stated that the tenant denied he did it. The landlord is seeking \$935.55 which was the cost to pump and clean out the sump.

The tenant gave the following testimony. The tenant stated that "I didn't do it; I didn't change my oil, they have no proof, and if someone makes a claim they have to have evidence".

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.

Although I fully accept that there was oil in the sump and the cost to have it cleaned, the landlord has not provided sufficient evidence to satisfy me that the subject tenant was the person responsible for it. The manager acknowledged that there were no eye witnesses that saw who had dumped the oil in the sump. Based on the landlord not being able to satisfy all four grounds as required and on the balance of probabilities I must dismiss the landlords application.

Conclusion

The landlords' 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: December 11, 2014

Residential Tenancy Branch

