



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GREATER VICTORIA HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for damage to the rental unit, pursuant to section 67; and
- authorization to recover the filing fee for this Application from the tenants, pursuant to section 72.

The two tenants did not attend this hearing, which lasted approximately 25 minutes. The landlord's agent, YB ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that she is the manager of tenant relations for the landlord company named in this Application and that she had authority to represent the landlord company as an agent at this hearing.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package on November 26, 2014, by way of registered mail. The landlord provided a Canada Post tracking number orally during the hearing. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's Application on December 1, 2014, five days after its registered mailing.

Issues to be Decided

Is the landlord entitled to a monetary award for damage arising out of this tenancy?

Is the landlord entitled to recover the filing fee for this Application from the tenants?

Background and Evidence

The landlord testified that this month to month tenancy began on June 1, 2013 and ended on September 30, 2014. Monthly rent in the amount of \$635.00 was payable on the first day of each month. A security deposit of \$317.50 was paid by the tenants. The landlord testified that the security deposit was returned in full to the tenants on October 2, 2014. The landlord provided a copy of the cheque returning the tenants' security deposit. A written tenancy agreement exists for this tenancy but the landlord did not provide a copy for this hearing.

The landlord indicated that a move-in condition inspection and report were completed on May 30, 2013 and a move-out condition inspection and report were completed on September 30, 2014. The landlord stated that there was no damage, cleaning or other costs at the end of this tenancy, as per the move-out condition inspection report. The landlord did not provide a copy of either report for this hearing.

The landlord testified that the caretaker discovered a rat nest in the heater while cleaning in the rental unit after the tenants vacated. The landlord stated that there was no indication of this problem during the move-out inspection. The landlord indicated that this nest had a strong smell of urine and cedar chips. The landlord stated that this nest was caused by the tenants' pet rat, as the caretaker previously saw the tenant's pet rat above the heater in the rental unit during the tenancy. The landlord stated that there were no problems with rats or other pests in this rental unit or in the rental building, as no pest control was called and the building is only three years old.

The landlord stated that the caretaker unsuccessfully attempted twice to clean the rat nest in the heater. The landlord indicated that no labour was being charged to the tenants for these cleaning efforts. The landlord testified that no pest control or specialists were hired to inspect or clean this area, only the caretaker who is involved in small maintenance and cleaning work. The landlord stated that the caretaker had permission in the form of a work order from the landlord's operations department, to clean this area. The landlord did not provide a copy of this work order. The landlord indicated that no droppings or infestation were present in the rental unit, so no pest control was needed. The landlord did not provide any photographs of the rat nest area.

The landlord seeks a monetary order in the amount of \$156.30 from the tenants for damage to the rental unit. The landlord stated that \$100.00 was for the caretaker's labour to remove the old heater, prepare and clean the area, purchase a new heater, prepare the new heater for installation and install the new heater. The landlord indicated that the preparation work took approximately 1.5 hours, while the installation took 0.5 hours. The landlord provided a summary invoice indicating that 2 hours of

labour was charged for \$100.00 total. The landlord also provided an invoice for \$56.30 for the purchase of the new baseboard heater. The landlord testified that she does not recall when the invoice for the new heater was paid but it is usually paid within 30 days, as per the landlord's regular practice.

The landlord confirmed that there was no contact made with the tenants prior to incurring expenses to fix the problem. The landlord stated that the tenants were not contacted to discuss the rat nest problem, determine the cause of the problem and the tenants' possible involvement or to ask whether the tenants would pay for any expenses to rectify the problem. The landlord stated that the tenants were mailed a letter, dated October 24, 2014, indicating that there was a rat nest caused by the tenants' pet rat, that unsuccessful attempts were made to clean the nest and that the old heater had to be removed and replaced with a new heater. The landlord provided a copy of the letter, which enclosed both invoices totalling \$156.30, for the cost of replacing the old heater and asked the tenants to pay the invoice immediately.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove, on a balance of probabilities, that the tenants caused damage to the rental unit.

The landlord did not provide any photographs of this rat nest area. The landlord did not provide a work order to show that the area was inspected by the caretaker, due to a rat nest. The caretaker did not testify at this hearing to provide any evidence. The landlord did not have any pest control or other professionals examine the area to determine the cause of the problem and whether a rat nest was actually present.

The landlord provided oral testimony to support its claim. The landlord did not provide sufficient documentary evidence that the tenants caused damage to the rental unit. The landlord identified this problem after the move-out inspection was completed. It is not clear when the rat nest was identified by the landlord but the invoice to the tenant is dated October 23, 2014. The tenants vacated the rental unit over three weeks prior on September 30, 2014. The landlord did not provide sufficient evidence that the tenants caused the rat nest to occur in the rental unit during this lengthy time period. The landlord did not provide sufficient evidence that the tenants had a pet rat and that this rat caused a nest in the heater.

The landlord did not contact the tenants until after the work was completed. The landlord did not attempt to determine whether the tenants caused the problem. The landlord did not attempt to resolve the matter prior to undertaking work, as the landlord did not ask the tenants to rectify the problem or pay for any potential work. The landlord had its own caretaker examine and repair the heater. The landlord did not demonstrate that the heater needed to be removed and replaced because of a problem.

On a balance of probabilities and for the reasons outlined above, I find that the landlord failed to meet its burden of proof to demonstrate that the tenants caused damage in the rental unit. Accordingly, the landlord's Application for a monetary award in the amount of \$156.30 for damage to the rental unit is dismissed without leave to reapply.

As the landlord was unsuccessful in its Application, it is not entitled to recover the \$50.00 filing fee from the tenants. The landlord must bear the cost for the filing fee.

Conclusion

The landlord's entire application is dismissed without leave to reapply. 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: April 17, 2015

Residential Tenancy Branch