



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CAPREIT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, FF

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord for a Monetary Order for damage to the rental property, and to recover the filing fee from the Tenant.

An agent for the Landlord (the "Landlord") and the Tenant appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Application and the documentary evidence. The Tenant confirmed that he had not provided any evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

Issue(s) to be Decided

Is the Landlord entitled to a Monetary Order for damage to the rental suite?

Background and Evidence

Both parties agreed that this tenancy began on December 2003 for a fixed term of one year and is currently in a month to month period. Currently, the Tenant pays rent for the unit on the 19th floor of a residential building for the amount of \$936.68 on the first day of each month.

The Landlord testified that in September 2014 he had received numerous complaints from other residents that the Tenant was in possession of a pellet gun which he was using to shoot at pigeons from his balcony. In support of this the Landlord provided two photographs taken of the Tenant on his balcony shooting a pellet gun.

The Landlord testified that the Tenant was spoken to about this at his rental unit who stated that he was frustrated with the pigeons causing a nuisance on his balcony. The Landlord testified that on September 18, 2014, the Tenant was issued with a breach letter informing him that the incident was a breach of his tenancy agreement and that this activity was to stop otherwise his

tenancy would be ended. A copy of this letter was provided into written evidence. The letter states:

"The Rental Office has received witness statements detailing the occupant of unit 1962 engaging in this activity as well as statements regarding the pellet gun being shot at other residents of the building"

[Reproduced as written]

The Landlord testified that on October 7, 2014 the Tenant was sent another letter requesting him to pay for damage he had caused to a window by shooting his pellet gun at it. The Tenant was sent another letter on October 23, 2014 informing him that the payment for the damage to the window was still outstanding.

The Landlord provided a copy of two invoices relating to the damage which details the work that was carried out for a cost of \$717.97 which the Landlord now claims from the Tenant. The Landlord testified that the window had to be replaced by them as the Tenant was refusing to pay for the damage and the cold weather required this to be done immediately.

The Landlord provided no evidence relating to the damage to the window being claimed. As a result, I asked the Landlord what evidence he had to support his claim of damage to the window. The Landlord testified that after the shooting incident of September 2014, the resident of a unit on the 22nd floor complained that her window had been damaged by one of the bullets from the Tenant's gun. The Landlord testified that he had photographs of the damages but he had not provided these into evidence prior to the hearing. The Landlord testified that the damage was caused only after the Tenant was on his balcony with the gun and that no other damage has been caused since the Tenant has stopped using it.

The Tenant explained that he had a persistent pest problem of pigeons on his balcony which was exacerbated when he was away from the rental unit for long periods of time getting medical treatment. The Tenant submitted that the Landlords had failed to take proper action with regards to this pest problem. Therefore, he did some research and discovered that the best way to get rid of the pigeons was to purchase a Red Rider pellet gun which was inexpensive and was like a kids' gun. The Tenant testified that he then used the gun to shoot at the pigeons from his balcony. The Tenant acknowledged that he was wrong to take this approach and has since not used the gun again. The Tenant testified that a week later after the shooting incident, he was visited by the police and he showed them the pellet gun he had used and explained to them that it was harmless.

In relation to the damaged caused to the window, the Tenant fervently denied that he had caused any damage with his gun. The Tenant explained that it was not possible for the pellet gun bullet to go through 4 mm of glass and that if he was in a court room he could demonstrate this. The Tenant explained that when he got the letter of October 7, 2014 in which he was being

accused of the damage, he went straight to the Landlord's office and explained that he had not caused the damage and was not going to pay any cost for damage he had not done.

The Tenant explained that he had not seen any evidence of damage to the window he is alleged to have caused or any of the complaints made by the resident of this damaged window. The Landlord explained that he was in possession of photographs showing the damage and the witness statements from the resident who reported the damage which he had not provided into evidence prior to the hearing. The Landlord submitted that the damage must have come from the Tenant's gun and why would he have gone to the extent of making the claim if the Tenant did not cause the damage. The Landlord pointed to the invoice as his evidence of the damage.

Analysis

I have carefully considered the evidence provided by the parties in this case but I have only documented the evidence which I relied upon to making findings in this decision. 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 the Landlords 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 Tenant. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords 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.

In this case, I find that the Landlord has failed to establish the first two parts of the above test. The basis of the Landlord's monetary claim is an allegation that the Tenant damaged a window three floors from his rental unit with a pellet gun. Therefore, it would have been a reasonable expectation and incumbent on the Landlord to firstly provide evidence of this damage so that a determination of whether this resulted from a gunshot could be made. However, while the Landlord went to the extent of providing some photographic evidence for this hearing, the Landlord provided no photographic evidence of the existence of the damage claimed in the Application.

The Landlord insisted that he had evidence of this which he had not provided for the hearing. However, I find that the Landlord did not even provide this to the Tenant. The only evidence before me that the Tenant was put on notice of the damage was in a letter dated October 7, 2014, being a significant period of time after the incident where the Tenant was on his balcony using the gun.

In such a claim, the Landlord would have been required, at minimum, to show some independent evidence that any damage caused to the unknown resident's window was the direct result of a gunshot and did not result from another cause. I have examined the Landlord's invoice evidence and I find that it is not sufficient to show that the damage to the window was caused from a pellet gun; the invoice evidence simply details the work that was carried out to replace the window.

The Landlord did not witness firsthand the Tenant shooting the pellet gun at the upper floor window and neither did he provide any independent evidence of this. In the letter dated September 18, 2014, the Landlord writes that they have witness statements from residents who have been shot at by the Tenant with the pellet gun. I find that such a statement in a written letter to the Tenant would have required the Landlord to provide these statements into evidence prior to the hearing or to make these witnesses available to be cross examined during the hearing.

Based on the foregoing, I find the Landlord has failed to meet the above test to prove the Tenant caused the alleged damages to the rental property. Therefore, I dismiss the Landlord's Application without leave to re-apply.

Conclusion

The Landlord has failed to meet the burden of proof for the monetary claim. As a result, I dismiss the Landlord's Application **without** leave to re-apply.

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: July 23, 2015

Residential Tenancy Branch

