



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Paynters Orchard Market
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC; RR

Introduction

This is the Tenants' Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; and for a rent reduction for repairs, services or facilities agreed upon but not provided.

Both parties signed into the teleconference on July 22, 2015. The hearing process was explained and the participants were asked if they had any questions.

The Tenants stated that they have moved out of the rental unit and gave their new address for service of documents.

The Tenants gave their oral testimony with respect to their application. There was insufficient time to hear the Landlords' oral testimony and therefore the matter was adjourned. An Interim Decision was made, which included Orders with respect to exchange of additional documents, and which should be read in conjunction with this Decision.

On July 24, 2014, the Residential Tenancy Branch received the Tenants' additional documentary evidence. These documents were provided in accordance with my Orders made July 22, 2015. The Landlords also provided additional documentary evidence on July 28, 2015, in accordance with my Orders made July 22, 2015.

It is important to note that the Tenants submitted additional documentary evidence on August 10, 14 and 31, 2015. This additional evidence was not considered because it was not provided for in my July 22, 2015, Orders. I had specified strict timelines and scope of the evidence for the additional exchange of documents. In my Interim Decision dated July 22, 2015, I had also advised both parties that no additional documentary evidence, other than the evidence listed in the Orders, would be considered.

The Residential Tenancy Branch mailed Notices of the reconvened Hearing to both parties on July 24, 2015. The Tenants signed into the reconvened Hearing; however, the Landlords did not sign into the Hearing. The Hearing remained open for 15 minutes.

As the reconvened Hearing was scheduled to hear the Landlords' testimony and the Landlords did not sign into the reconvened Hearing to provide their evidence, I advised the Tenants that I would provide my Decision based on the Tenants' testimony and evidence only.

On July 22, 2015, it was determined that the tenancy ended on or about February 1, 2015. Therefore, the Tenants' application for a reduction in rent is dismissed.

Issue to be Decided

Are the Tenants entitled to compensation for damage or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The Tenants gave the following testimony on July 22, 2015:

The rental unit is in a mixed-use two storey building. There are commercial offices on the first and second floors. The rental unit is the only residence and is located on the second floor.

The Tenants testified that on 2:48 a.m., February 28, 2014, two intruders gained entry to an office on the second floor through a window which had no locking mechanism. The Tenants submitted that the building has an alarm system which was not activated at the time of the break-in. They submit that if the window had been locked, the action of breaking the glass would have activated the alarm and prevented the break-in, or at least alerted the Tenants to the intruders. The Tenants testified that the intruders gained access to the rental unit after breaking into the second floor office, by breaking down the Tenants' door. The Tenants were threatened and humiliated by the two intruders, who said that they were armed with a gun. This home invasion left both Tenants fearful for their lives. On April 16, 2014, there was a second break-in at the same office.

The Tenant HR met with his doctor on March 10, 2014, May 27, 2014 and June 16, 2014. The doctor concluded that HR suffers from anxiety, hypervigilance, insomnia and mood disturbances. The Tenants provided a copy of a letter dated June 23, 2014, from HR's doctor, which concludes that HR "has presented with symptoms consistent with post traumatic stress disorder after an apparent home invasion".

On December 19, 2014, the Tenants and the Landlords discussed implementing safety measures at the rental unit, which included replacing the plastic molded front door with a steel frame door and expanding the rental unit, separating it from the commercial portion of the building. The Tenants submitted that the Landlords did not act on the agreed-upon safety measures.

The Tenants submit that the Landlords failed in their duty of care to the Tenants by failing to provide and maintain adequate locks or locking devices on all exterior door and windows in the building. The Tenants submit that the Landlords also failed to provide the Tenants' right to quiet enjoyment. The Tenants submit that they have been unable to work since February 28, 2014.

The Tenants seek compensation and "punitive damages" in the amount of \$100,000.00, but recognize that the monetary jurisdiction for Residential Tenancy matters is limited to \$25,000.00. Therefore, they seek a monetary award in the amount of \$25,000.00 against the Landlords.

Analysis

Section 32(1) of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and to make it suitable for occupation by a tenant.

Section 7(1) of the Act provides that if a landlord does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord must compensate the tenant for the damage or loss which results.

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Tenants' claim for damage or loss under the Act and therefore the Tenants have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlords pay for the loss requires the Tenants to satisfy four different 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 Landlords in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenants followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In order to be successful in a tort claim, the Tenants must show that the Landlords breached the care owed to the Tenants and that the loss claimed was a foreseeable result of the breach. It is important to note that an arbitrator has no authority to award punitive damages under the Residential Tenancy Act.

I find that the Tenants provided sufficient proof that damage or loss exists and therefore the Tenants have satisfied the first element of the test for damages. However, I find that the Tenants provided insufficient evidence that the damage or loss resulted from the actions or neglect of the Landlords. I find that there was insufficient evidence that the second floor office window had no locking mechanism or that the Tenants' door was not a secure door. The Tenants' documentary evidence refers to photographic evidence; however, no photographs were provided in evidence by the Tenants.

Conclusion

The Tenants' 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: September 16, 2015

Residential Tenancy Branch

