



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested a Monetary Order for money owed or compensation for damage under the *Residential Tenancy Act*, regulation or tenancy agreement and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

At the outset of the hearing the Landlord confirmed the corporate Landlord's name. I have corrected the Tenant's Application for Dispute Resolution pursuant to section 64(3)(c) to accurately note the Landlord's name.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Tenant recover his filing fee?

Background and Evidence

The tenancy began in June 2014. Monthly rent was payable in the amount \$675.00. The Tenant gave notice to end his tenancy and the tenancy ended on July 1, 2015.

Introduced in evidence was a copy of the tenancy agreement dated June 20, 2014 (the "Agreement"). Clause 29 of the Agreement reads as follows:

***"29 LIABILITY AND INSURANCE.** The tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability. The tenant agrees that the landlord will not be responsible for any loss or damage to the tenant's property. The tenant will be responsible for any claim, expense, or damage resulting from the tenant's failure to comply with any term of this Agreement and this responsibility will survive the ending of this Agreement."*

The Tenant sought monetary compensation in the amount of \$1,805.00 for replacement of his sofa which he claims was damaged by persons acting on behalf of the Landlord. Introduced in evidence was a receipt for the initial purchase of the sofa, photos showing damage to the sofa, as document from the furniture dealer from whom the sofa was initially purchased noting the sofa was "beyond repair".

The Tenant testified that he was scheduled to move out of the rental unit on July 1, 2015. He stated that he was not able to move his furniture because the Landlord advised him that there were eight other people who were also moving in on that date such that the Tenant would not be able to use the elevator. The Tenant stated that the rental unit is on the 8th floor and therefore it was not possible for the furniture to be moved without the use of the elevator.

The Tenant further testified that the Landlord offered to store the Tenant's belongings in a vacant unit until July 2, 2015 when his items could be moved. The Landlord arranged for movers (who were other residents of the rental building) to assist the Tenant in moving the furniture to the vacant unit. The Tenant's furniture was then moved two floors up from the Tenant's former apartment so that his rental unit was available for the new renter. The Landlord paid for the "movers" with funds from the Tenant's security deposit.

The Tenant testified that the Landlord assured him that his belongings would not be damaged. The Tenant further says that he was very concerned about his sofa and his

artwork and expressed these concerns to the Landlord. He confirmed that the sofa was only a year old as noted on the invoice for the sale. (Notably, the copy of the invoice originally submitted in evidence was not readable and as such I directed the Tenant to resubmit the invoice by no later than March 1, 2016. On February 24, 2016, the Tenant provided a further copy of the invoice which was readable and confirmed the sofa was purchased on July 19, 2014.)

The Tenant alleges that the sofa was damaged during the move from his rental unit to the vacant unit. He further alleges the sofa is not repairable and requires compensation in the amount of the full replacement cost. In support he submitted a quote from the store from which he originally purchased the sofa upon which the writer has noted, "old sofa beyond repair" and a replacement cost of \$1,805.00.

The Landlord's representative, R.H., testified on behalf of the Landlord. R.H. stated that the tenancy began July 15, 2014.

The Landlord provided a copy of the move out condition inspection report in evidence which confirmed that the Tenant agreed to deductions to his security deposit including payment of the "movers". R.H. testified that the Tenant owes the Landlord \$214.25 as a result of the amounts noted on the move out report, but the Landlord has "written this off".

R.H. confirmed that the Tenant was informed he had to book the elevator by mid-month to ensure he was able to move his furniture at the end of the month. R.H. stated that the Tenant failed to do so and as such the Tenant was not able to move on the 1st of the month. To assist the Tenant, R.H. suggested the Tenant could store his items two floors up in a rental unit which was being renovated. R.H. also arranged for a couple of occupants in the rental building who could assist in moving the furniture, but the Tenant would have to pay them. R.H. stated that the Tenant agreed to this and the cost of the movers is noted on his move out report as a \$60.00 expense.

R.H. stated that the funds he used to pay the movers were in fact the Tenant's and as such he submitted the Landlord was not responsible for any related damage.

The Landlord submitted in evidence correspondence from the individuals who helped move the Tenant's sofa. The writers are inconsistent in terms of whether they believe the sofa was damaged before the move, or during. One writer claims the Tenant informed him the sofa was damaged when it was initially *moved in*.

J.W. testified that after the sofa was moved, the Tenant called him to report that it had been damaged. J.W. stated that the Tenant informed him that the spine was broken. J.W. stated that he observed the sofa and saw that the spine was not damaged at all.

The Tenant disputed the Landlord's allegation that he was responsible for the damage because he didn't make timely arrangements. He stated that he gave one month's notice and it was not reasonable for the Landlord to allow 8 people to move in on the same day thereby preventing him from being able to move out.

The Tenant further disputed the Landlord's claim that the sofa was previously damaged. He also stated that he had no involvement with choosing who would move the sofa. He said he didn't know these people at all as they were hired by the Landlord.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Pursuant to clause 29 of the Agreement, the Tenant is required to carry tenant's insurance. This clause also provides that the Landlord will not be responsible for any damage to the tenant's property. Clause 29 also specifically provides that the Tenant's responsibility to carry insurance survives the ending of the Agreement.

The Tenant is bound by the terms of the Agreement unless the Tenant can prove a term is unconscionable. Pursuant to the agreement, the Tenant agreed that the Landlord would not be responsible for any damage to the Tenant's property. The Tenant failed to introduce any evidence or make submissions which would support a finding that clause 29 was unconscionable. Accordingly, I dismiss the Tenant's claim for compensation for damage to his sofa.

As the Tenant has been unsuccessful, I dismiss his claim for recovery of the filing fee.

Conclusion

The Tenant agreed, pursuant to clause 29 of the tenancy agreement, that he would carry tenant's insurance and would save the Landlord harmless from any claims for loss or damage to the Tenant's property. Accordingly, his claim is dismissed in its entirety.

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: March 8, 2016

Residential Tenancy Branch

