



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER MACPHERSON REAL ESTATE LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking a monetary order for compensation for loss or damage suffered under the Act, regulation or tenancy agreement and the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The landlord acknowledged receipt of evidence submitted by the tenant. The landlord did not submit any documentation for this hearing. Both parties gave affirmed testimony.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence

The tenant's testimony is as follows. The tenancy began on December 1, 2012 and ended on November 30, 2013. The tenants were obligated to pay \$950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$475.00 security deposit. The tenant stated that when he moved into this building he was advised that it was a non-smoking building. The tenant stated that the neighbors on either side of him were both smokers. The tenant stated that he was unable to use his balcony from June 2013-November 2013 because the neighbors were always smoking on their balcony. The tenant stated that he sent an e-mail to the onsite manager as well spoke to them in

person about this. The tenant stated nothing was done about it and seeks \$150.00 x 6 months loss of use of the balcony = \$900.00.

The tenant stated that he is also seeking \$246.39 for damages to his headboard due to the actions of the landlords' pest control company. The tenant stated that bedbugs had been discovered in the building and the landlord was conducting spraying of each suite to remedy the problem. The tenant stated that his box spring was propped up against a wall and that he heard a loud noise. When he went to investigate he noticed the box spring had landed on the integrated bedframe and headboard causing a two centimeter tear in the faux leather headboard. The tenant seeks the full cost of the headboard as compensation.

The landlord's agent gave the following testimony. The agent stated that he doesn't understand why the tenant waited two years to file an application for these matters. The agent stated that he does recall the tenant complaining about the smoke. The agent stated that he spoke to the subject tenants neighbors and reminded them of the no smoking policy. The agent stated that tenants have guests over that occasionally smoke but it's not grounds to evict them. The agent stated that he only recalls one e-mail from the tenant complaining about the smoking to which the agent posted notices throughout the building reminding all tenants of the no smoking policy.

The agent stated that the bed bug spray occurred on September 12, 2013 but the tenant didn't advise him of the alleged damage until November 26, 2013. The agent stated that again, the tenant did not inform him of any issues at the time of the incident. The agent stated that he found it peculiar that the tenant did not inform him right away if someone had damaged his bed. The agent stated that he followed up with the pest control company and was told that no damage had occurred in the unit and declined any responsibility. The agent stated that the tenants' entire claim should be dismissed.

Analysis

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

Section 67 of the Act states that 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 all four of 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.

1. Loss of Use of the Balcony - \$900.00.

The tenant provided one e-mail complaint to support his claim. The agent stated that the matter was addressed by speaking to the adjacent tenants and posting notices throughout the building reminding the tenants of the no smoking policy. The agent stated that he didn't hear about it again until he was served with the notice of this hearing. Based on the above I find that the tenant has not provided sufficient evidence to support his claim. The tenant has not satisfied all four grounds as listed above, which is required to be successful. Based on the insufficient evidence before me and on a balance of probabilities I dismiss this portion of the tenants' application.

2. Damaged headboard - \$246.39.

The tenant submitted a receipt showing that he purchased the bedframe and headboard on November 26, 2012. The tenant stated that the pest control technician damaged the headboard on September 12, 2013, but the tenant didn't report it to anyone until November 26, 2013. The lapse in time is concerning as is the lack of steps taken by the tenant to report and mitigate the issue. The tenant was unable to satisfy me that the pest control technician was responsible for damaging his headboard based on the insufficient evidence before me. Based on the insufficient evidence before me and on a balance of probabilities I dismiss this portion of the tenants' application.

The tenant has not been successful in his application.

Conclusion

The tenants' application 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: June 22, 2016

Residential Tenancy Branch