



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDC RP

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 12, 2016 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss; and
- an order compelling the Landlord to make repairs to the unit, site, or property.

The Tenant attended the hearing on her own behalf and was assisted by B.K., a legal advocate. The Landlord did not attend the hearing. The Tenant provided her solemn affirmation.

The Tenant testified she tried to serve the Notice of a Dispute Resolution Hearing on the Landlord, in person, on or about August 17, 2016, but that the Landlord's agent refused. According to the Tenant, she returned the next day and the Landlord's agent accepted service.

Contrary to Residential Tenancy Branch Rule of Procedure 3.14, the documentary evidence upon which the Tenant relied was received at the Residential Tenancy Branch on October 3, 2016. B.K. submitted that the Tenant's documentary evidence was served on the Landlord, in person, at the same time as the Notice of a Dispute Resolution Hearing. Based on the undisputed testimony of the Tenant, and the submissions of B.K., I find that the Landlord was served with the Notice of a Dispute Resolution Hearing and the Tenant's documentary evidence on August 18, 2016.

The Tenant was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

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 and Procedural Matters

At the outset of the hearing, the Tenant advised she no longer lives in the rental unit, and that she no longer requires an order requiring the Landlord to make repairs to the unit, site or property. Accordingly, this aspect of the Tenant's claim will not be considered further in this Decision.

Issue to be Decided

Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The Tenant seeks an order granting compensation for damage to a television she testified was caused by a falling window pane.

According to the Tenant, there was a hole the size of a basketball in the window when she moved into the rental unit. The window was subsequently repaired by the Landlord. However, according to the Tenant, her husband returned home one day to find the window pane on the ground next to the television. Soon after, the Tenant and her husband discovered the television had been damaged. According to the Tenant, the television had been purchased only six months earlier.

Submitted with the Tenant's documentary evidence was a photograph depicting the location of the television in relation to the window. A second photograph shows damage to the front lower portion of the television screen. In addition, the Tenant included with her documentary evidence copies of a text message to the Landlord, dated July 24, 2016, which stated: "The window is half falling out again..." In a subsequent text message, dated July 30, 2016, the Tenant wrote: "The window has just fell out again." [Reproduced as written.]

The Tenant is seeking the replacement value of the television. She provided with her documentary evidence copies of two estimates for what she says are comparable television sets.

The Tenant has also claimed for the monetary value of meat and dairy products that spoiled when the fridge in the rental unit stopped working. Although the Tenant could not confirm the date the fridge stopped working, she testified she was provided with access to a fridge in another rental unit a few days later. In support of her claim, she provided an image of text messages to the Landlord concerning a replacement fridge.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with this *Act*, the Regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

The burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Tenant testified the window fell out of the frame and onto the television set, resulting in damage. The Tenant provided photographic images depicting the placement of the television in relation to the window, and of damage to the front of the television.

However, I find that the Tenant has provided insufficient evidence for me to conclude, on a balance of probabilities, the damage to the television was caused by the falling window. Indeed, the Tenant did not submit an image of the window or television when the damage occurred, or of the window that was alleged to have fallen out on or about July 30, 2016. In addition, the location of the damage on the front lower portion of the television screen appears to be inconsistent with the damage as depicted on the Tenant's photographic images.

With respect to the claim for spoiled meat and dairy products, I find there is insufficient evidence for me to conclude the Tenant is entitled to an award. In particular, no photographic evidence or receipts for spoiled food were submitted with the Tenant's documentary evidence.

I find the Tenant has provided insufficient evidence for me to conclude she is entitled to a monetary award for the damage or losses alleged. Accordingly, the Tenant's Application is dismissed, without leave to reapply.

Conclusion

The Tenant's 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: October 11, 2016

Residential Tenancy Branch

