



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

This is the Tenants' Application for Dispute Resolution, made September 21, 2016, seeking compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties signed into the teleconference and gave affirmed testimony.

The Landlord gave a new address for service of documents.

The Tenants testified that they served the Landlord with their Notice of Hearing documents and copies of their documentary evidence by registered mail, sent on September 22, 2016. The Landlord acknowledged service in this manner.

The Landlord testified that he served the Tenants with his documentary evidence by registered mail. The Tenants acknowledged service.

Issue(s) to be Decided

Did the Landlord breach the Act, regulation or tenancy agreement, and if so, are the Tenants entitled to monetary compensation?

Background and Evidence

The Tenants testified that the landlord is "attempting to enforce policy not in play" at the rental property. The Tenants have two children, ages 6 and 10. They testified that the Landlord says that they have to be within 12 feet of their children when their children are playing at the playground which is on the rental property grounds.

The Tenants' monthly rent is \$1,100.00. The tenancy began on May 1, 2016. They seek compensation in the amount of \$5,000.00 because they submit that the Landlord is harassing them and their children, which is impacting negatively on their right to peaceful enjoyment of the rental unit.

The Landlord has given the Tenants written warning that their tenancy is in jeopardy because of a complaint made on September 14, 2016, alleging the Tenant JM confronted the Landlord, yelling, swearing and calling him names.

The Landlord testified that "all kids must be supervised within 10 – 15 feet" while they are using the playground area. He stated that the Tenants' home is approximately 50 feet from the playground and that the Tenants supervise their children from their home. He stated that this is a safety issue and that there is a sign clearly posted. The Landlord stated that it is also a rule of the rental property and that other occupants have no issue with the rule. The Landlord testified that the tenants signed off and agreed to the rules on April 8, 2016.

The Tenants disputed that the rule is specific regarding distance of supervision. They stated that their children are afraid of the Landlord because he should that them.

Analysis

It is important to note that neither party provided a copy of the tenancy agreement or any addendum, amendment or rules pertaining to the tenancy agreement. The parties disagreed with respect to what the rules say.

Residential Tenancy Policy Guideline 16 provides the following, in part, with respect to compensation for damage or loss:

A. LEGISLATIVE FRAMEWORK

Under section 7 of both the *Residential Tenancy Act* and the *Manufactured Home Park Tenancy Act*:

- ☐ a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- ☐ the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the *Residential Tenancy Act* and section 60 of the *Manufactured Home Park Tenancy Act*, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:

- ☐ determine the amount of compensation that is due; and
- ☐ order that the responsible party pay compensation to the other party.

B. DAMAGE OR LOSS

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- ☐ loss of access to any part of the residential property provided under a tenancy agreement;
- ☐ loss of a service or facility provided under a tenancy agreement;
- ☐ loss of quiet enjoyment (see Policy Guideline 6);
- ☐ loss of rental income that was to be received under a tenancy agreement and costs associated; and
- ☐ damage to a person, including both physical and mental.

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- ☐ a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- ☐ loss or damage has resulted from this non-compliance;
- ☐ the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- ☐ the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

These criteria may be applied when there is no statutory remedy (such as the requirement under section 38 of the *Residential Tenancy Act* for a landlord to pay double the amount of a deposit if they fail to comply with the Act's provisions for returning a security deposit or pet deposit).

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

☐ "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

☐ "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the

value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

[reproduced as written]

The Tenants seek an amount which is close to the total amount of rent paid for the time they have lived at the rental property at the time they made their Application. In this case, I find that the Tenants have not provided sufficient evidence that the Landlord breached the Act, regulation or tenancy agreement; that damage has resulted; or the amount or value of damage or loss.

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: December 18, 2016

Residential Tenancy Branch