



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, FF; MNDC, OLC, RPP, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- order for damage to the rental unit pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order requiring the landlord to return the tenant's personal property pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Amendment of Tenant's Application

During the hearing the tenant testified that he had increased his monetary application from \$2,033.00 to \$12,104.00. Pursuant to Rule 4.1 of the Residential Tenancy Branch Rules of Procedure, an applicant may amend a claim by completing an Amendment to

an Application for Dispute Resolution Form (“amendment form”) and filing the completed amendment form with supporting evidence to the Residential Tenancy Branch. In the absence of a completed amendment form, I deny the tenant’s request to amend his application to increase his monetary claim to \$12,104.00. The tenant’s monetary claim remains at \$2,033 as stated in his original application.

Issue(s) to be Decided

Is the landlord entitled to an order for damage to the rental unit?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to return the tenant’s personal property?

Is either party authorized to recover the filing fee for this application?

Background and Evidence

The rental unit is a second floor unit in an apartment complex. As per the testimony of the parties, the tenancy began on September 1, 2014 on a month-to-month basis. Rent in the amount of \$1,213.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$550.00 and pet deposit in the amount of \$550.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

Sometime after the tenancy began, the tenant installed what the parties refer to as a “cat track” to the exterior of the building. The cat track was constructed by the tenant and consisted of metal brackets and pieces of plywood. The track allowed the tenant’s cat to safely travel from the second floor balcony to the ground. In December of 2016, the “cat track” was removed and disposed of by the landlord.

Landlord Claims

The landlord applied for a monetary award in the amount of \$1,487.50 for the following;

Item	Amount
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Asphalt cleaning	\$787.50
Repair holes from cat track, repair door	\$700.00
Total Monetary Claim	\$1,487.50

The landlord explained that during the tenancy, the tenant rented three parking stalls in the underground parkade to perform work on vehicles. The landlord contends that the parking stalls have been stained as a result of the work. The landlord now seeks compensation to have the area cleaned and has provided a written estimate in the amount of \$787.50. The landlord testified that the cleaning has not been conducted to date.

The landlord explained that the unauthorized installation of the “cat track” has left holes that require repair and the unauthorized installation of an exterior door stopper has left damage that also requires repair. The landlord estimates it will cost \$700.00 to repair the holes, remove the stopper and refinish the door to its original condition.

The landlord acknowledged that because he removed the cat track and disposed of it, he is agreeable to paying the tenant \$100.00 for the materials.

Tenant Claims

In reply to the landlord's claim, the tenant contends that the asphalt was stained prior to his use and that he did not stain the asphalt. The tenant testified that he had permission to install the cat track and without notice the landlord removed the track in December of 2016. The tenant seeks an order requiring the landlord to return and/or reinstall the cat track. The tenant applied for a monetary award in the amount of \$2,033.00 for the following;

Item	Amount
Cat track materials	\$100.00
Lost income	\$720.00
Damages effecting well-being of cat and tenant	\$1,213.00
Total Monetary Claim	\$2,033.00

The tenant seeks \$100.00 in materials, \$720.00 for 3 days of lost income and \$1,213.00 in damages. The tenant testified that his cat, primarily an outdoor cat, has encountered issues adjusting to life without the track. The tenant has had to spend a considerable amount of time retraining and attending to his cat's new needs.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

In this case, the onus is each applicant to prove, on a balance of probabilities, 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 respondent 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.

In regards to the landlord's application, I find the landlord has provided insufficient evidence to establish the asphalt was stained due to actions or neglect of the tenant and therefore dismiss this portion of the landlord's claim. Although the landlord has provided an estimate to repair the cat track holes and door stopper, I find the landlord has failed to provide an actual amount required to compensate for these repairs and therefore dismiss the remainder of the landlord's claim.

I find the tenant has provided insufficient evidence to establish that he had permission to install the cat track. Therefore I find the landlord was at liberty to return the residential property to its original condition by removing the cat track. Accordingly, I dismiss the tenant's claim to order the landlord to reinstall the track.

Based on the landlord's admission that he disposed of the cat track I dismiss the tenant's claim for an order requiring the landlord to return the tenant's personal property. Instead I award the tenant \$100.00 based on the landlord's admission that he is willing to compensate the tenant \$100.00 for the disposed cat track materials.

In regards to the tenant's claim for lost wages for the filing of his application, I find the tenant failed to provide sufficient evidence to establish he missed three days of work, that three days of work equates to \$720.00 or that he was required to file in person rather than online. For these reasons I dismiss this portion of the tenant's claim.

Finally in regards to the tenant's claim that he and his cat are entitled to compensation for the loss of the cat track, I dismiss this claim. The tenant was not authorized to install the cat track, the tenant entered into a tenancy for a second level unit of an apartment complex knowing he had a cat that in his testimony was primarily an outside cat. I find the tenant knew or ought to have known that his cat would have outdoor needs and that these needs would not be adequately met on the second level of an apartment complex. Therefore I find any loss endured was not the result of the landlord and therefore dismiss this portion of the tenant's claim.

As neither party was entirely successful in their respective claims, I find neither party is authorized to recover the filing fee.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The tenant is entitled to deduct \$100.00 from future rent in satisfaction of the cat track material cost.

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: April 10, 2017

Residential Tenancy Branch