



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HAROB HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC

Introduction

On May 6, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement.

The matter was set for a conference call hearing. 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.

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.

Issues to be Decided

- Is the Tenant entitled to an order requiring the Landlord to comply with the Act, Regulation, or the tenancy agreement?

Background and Evidence

The Landlord and Tenant both testified that the tenancy is a month to month tenancy that began sometime around December of 2016. Rent in the amount of \$1,326.00 is to be paid to the Landlord by the first day of each month.

In the details of dispute section of the Tenant's application the Tenant indicates he is seeking restitution for lost property in the amount of \$1,425.00. The Tenant indicates

that a wallet and cash went missing from his apartment, after the Landlord entered without authorization.

The Tenant submitted that he arrived home at 3:00 pm on January 31, 2018, to find that his wallet was missing from his kitchen table.

The Tenant testified that the Landlord needs to be held accountable for the loss of the wallet due to the Landlord entering the unit without authorization and leaving a worker unattended in the unit.

The Tenant is seeking \$565.00 for the replacement value of a wallet and \$860.00 in cash for a total claim of \$1,425.00. The Tenant did not provide any documentary evidence to establish the value of the loss. There is no documentary evidence showing the wallet; the Tenant's cost to purchase the wallet; or the cost to replace the wallet.

The Tenant submitted that the money in the wallet was from Christmas gifts, but did not provide an itemized list.

In response to the Tenant's testimony, the Landlord testified that they became aware of a repair that was required in the Tenant's rental unit. The Landlord gave notice that the unit would be entered for the purpose of the repair on the Monday and Tuesday. The Landlord's worker was not able to perform the repair on those days and the Landlord and the worker entered the rental unit the next day on Wednesday.

The Landlord acknowledged that he did not give the Tenant proper notice that he was entering the unit as required under the Act. The Landlord testified that he offered the Tenant compensation for failing to provide proper notice to enter; however, the Tenant declined the offer and chose to apply for dispute resolution.

The Landlord suggested to the Tenant that the Tenant should have made a claim against his rental insurance.

Analysis

Section 29 of the Act provides that a Landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;

- (b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) The purpose for entering, which must be reasonable;
 - (ii) The date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) The landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) The landlord has an order of the director authorizing the entry;
- (e) The tenant has abandoned the rental unit;
- (f) An emergency exists and the entry is necessary to protect life or property.

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

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; 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.

Residential Tenancy Branch Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

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.

Section 7 of the Act states that if a Landlord or Tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that in situations where the Landlord enters a rental unit, or permits another person to enter a rental unit, the Landlord is responsible to ensure the safety of the Tenant's possessions.

I find that the Landlord did not have permission to enter the rental unit when he gave access to his employee for the purpose of completing a repair. The Landlord failed to get permission and did not provide written notice on entry.

I find that the Landlord breached the section 29 of the Act. Pursuant to section 7 of the Act, the Landlord must compensate the Tenant for the damage or loss that results. The Landlord previously offered the Tenant compensation, and the Tenant declined.

I find that the Tenant has provided insufficient evidence to establish that the loss exists and insufficient evidence of the actual amount of the loss. The Tenant provided insufficient documentary evidence to support his claim. There are no photographs, receipts, quotes, or an itemized list of gifts. The Tenant did not actually see who took his wallet.

The Tenants claim for \$1,425.00 is dismissed without leave to reapply.

I award the Tenant a nominal award of \$100.00 due to the Landlord's breach of section 29 of the Act.

I order the Landlord to comply with section 29 of the *Act* that requires the Landlord to get permission for entry or provide written notice in advance of entry.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful with his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I find that the Landlord owes the Tenant the amount of \$200.00. I authorize the Tenant to withhold \$200.00 from one future rent payment.

Conclusion

The Landlord entered the rental unit without permission or written notice.

I order the Landlord to comply with section 29 of the Act that that requires the Landlord to get permission to enter or provide written notice in advance of entry.

I award the Tenant a nominal award of \$100.00 due to the Landlord's breach of section 29 of the Act, and \$100.00 for the cost of the filing fee. I authorize the Tenant to withhold \$200.00 from one future rent payment.

The Tenant's claim for \$1,425.00 is dismissed without leave to reapply due to insufficient evidence of loss and value of loss.

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: July 03, 2018

Residential Tenancy Branch