



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARK DRIVE INVESTMENTS
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 28, 2018 (the "Application"). The Tenant applied for a monetary order relating to damage or compensation, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant and the Tenant's representative D.D. attended the hearing. The Landlord prior to November 1, 2016, H.C., attended the hearing along with his representative E.L.. The Landlord who took over managing the rental unit as of November 1, 2016, J.R., along with his representative D.M. also attended the hearing at the appointed date and time. All parties in attendance provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlords by registered mail on January 4, 2019. The Landlords confirmed receipt. The Landlords testified that they served the Tenant with their documentary evidence by registered mail on April 15, 2019. The Tenant confirmed receipt. No issues were brought up regarding service of documents; therefore, pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were 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 Matters

At the start of the hearing, D.M. requested that A.G. be removed from the Application as he had been improperly named as a Landlord. All parties agreed that A.G. could be removed from the Application, therefore the Application was amended to exclude A.G..

D.M. also had a concern regarding the Tenant's Application being made outside of the two year limitation period established by Section 60 of the *Act*. The parties agreed that the tenancy ended on December 31, 2016. The Tenant's Application was made on December 28, 2018. As such, the Tenant submitted his Application within the limitation period.

Issue(s) to be Decided

1. Is the Tenant entitled to monetary compensation relating to damage or loss, pursuant to Section 67 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2011. Rent in the amount of \$1,393.25 was due to the Landlord each month. The Tenant paid a security deposit in the amount of \$667.50 which has since been returned to the Tenant. The tenancy ended on December 31, 2016.

The Tenant testified that he is seeking monetary compensation in the amount of \$8,975.42 in relation to some of his personal possession that were discarded by the Landlord, as well as claims for loss of quiet enjoyment, aggravated damages and moving costs. The Tenant set out his claims on a monetary worksheet described below;

The Tenant testified that the building he resided in had been owned and managed by H.C. until November 1, 2016, at which point H.C. sold the property to J.R. who became the new Landlord. The Tenant stated that J.R. intended on conducting renovations to the building and began by redeveloping the back yard of the building which had previously been used by the Tenant. The Tenant indicated that in October of 2016, he came home to discover that the back yard which he had spent time and money

maintaining had been demolished. The Tenant stated that he cared for the gardens and greenspace that had once been there for his use.

The Tenant stated that aside from losing the garden space, some of his items had been removed and disposed of. The Tenant is claiming \$1,202.54 for a vintage bicycle as well as \$290.00 for a Norco bicycle. The Tenant provided a copy of an online advertisement which he stated were similar to the bikes he had, and is therefore claiming for the price associated with the bikes listed in the ads. The Tenant also submitted a picture of himself on a bike in support.

In response, the J.R. acknowledged that the bikes were discarded; however, he claimed that the bikes were found under a stairwell, unlocked and were in poor condition; therefore they were assumed to garbage.

The Tenant is also claiming for 8 sleds in the amount of \$96.24 as well as a cooler in the amount of \$137.48. The Tenant stated that the Landlord did not have his permission to remove any of his items, nor was he given any notification of items needing to be removed prior to the backyard being cleaned up.

In response, J.R. testified that the cooler is still at the building and can be retrieved by the Tenant at any time. J.R. did not dispute the removal of the sleds.

The parties agreed that J.R. had previously compensated the Tenant in the amount of \$325.00 for the items that were discarded. The Tenant stated that he was expecting more than that amount.

The Tenant is also claiming for moving costs in the amount of \$49.16, loss of quiet enjoyment in the amount of \$4,200.00 as well as aggravated damages in the amount of \$3,000.00. The Tenant stated that he had previously been served a Two Month Notice for Landlord's Use, which was set aside in a previous dispute resolution proceeding.

The Tenant stated that while he was successful in overturning the Notice, he was impacted by the renovation which had commenced in a neighbouring suite. The Tenant indicated that at time, the workers were heard working late and seemed suspicious. Furthermore, the Tenant has indicated that he would have workers requesting to enter his suite without notice. The Tenant provided two written statements from his former neighbours in support. As a result, the Tenant stated he provided J.R. his notice to end tenancy effective December 31, 2016.

D.M. stated that there were no complaints made from the Tenant to the Landlord regarding work or noise taking place at the building. D.M. stated that the Landlord is within his right to conduct renovation to a vacant unit and denied that construction was taking place in the late hours of the evening. Furthermore, D.M. stated that the Tenant decided to end the tenancy on his own; therefore, the Landlords should not be held responsible for compensation relating to moving costs.

Analysis

Based on the affirmed oral testimony and documentary evidence, 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 the *Act*, 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.

In this case, 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 is claiming for compensation relating to items that were left in the backyard of the apartment building. The parties agreed that J.R. arranged for the backyard to be redeveloped, which included the removal of any items that were left in the yard without notice. In regard to the two bicycles, I find that the Tenant has provided insufficient evidence to demonstrate the true value of his loss.

Aside from providing two ads for bicycles, the Tenant has not provided sufficient evidence to support the bicycles in the ads are the same type of bicycles that were discarded. Furthermore, the J.R. indicated that the discarded bicycles were in poor condition, and were placed under a stairwell unlocked. I find that the Tenant failed to mitigate his loss by not having the bicycles properly locked and secured.

In relation to the Tenants claim for 8 sleds as well as a cooler, the parties agreed that 8 sleds has been discarded, however, J.R. stated that the cooler is still located at the building and can be retrieved by the Tenant at any time. While I find that the Tenant has provided insufficient evidence to support the true value of his loss, I do find that the Tenant is entitled to some form of compensation relating to the discarded items.

The parties agreed that J.R. had previously compensated the Tenant with a monetary amount of \$325.00 after he learned that the items that had been discarded belonged to the Tenant. I find that this is an appropriate amount of compensation in this circumstance, and therefore dismiss the Tenant's claim for any further compensation relating the Tenant's discarded items.

The Tenant is claiming \$4,200.00 for loss of quiet enjoyment relating to the renovation that was taking place in the building near the end of his tenancy. Furthermore, the Tenant stated that the workers were requesting to enter his suite without notice.

According to the Residential Tenancy Policy Guideline 6, "Entitlement to Quiet Enjoyment" addresses the distinction between a tenant's right to quiet enjoyment (as defined by Section 28 of the Act) and the inconvenience associated with a landlord complying with Section 32. The relevant portion of the Guideline states:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and

situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In this case, I find that the Tenant provided insufficient evidence to demonstrate that the Landlord or the workers hired by the Landlord substantially interfered with the ordinary and lawful enjoyment of the premises. I further find that the Tenant has provided insufficient evidence to indicate that he communicated his concerns regarding the noise and workers interrupting him to the Landlord which would have demonstrated mitigation. As such, I dismiss the Tenant's claim for loss of quiet enjoyment without leave to reapply.

The Tenant has also claimed for aggravated damages in the amount of \$3,000.00 and moving costs \$49.16 associated with the circumstances surrounding his decision to end his tenancy.

According to Residential Tenancy Policy Guideline 16 "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.

In this case, I accept that the Tenant ended his tenancy on December 31, 2016 by providing written notice to the Landlord. As such, I find that the Tenant is not entitled to recover moving costs as a result of his decision to move out of the rental unit. I find that if the Tenant had issues surrounding the tenancy, he could have applied for a remedy under the *Act* at that time. I further find that the Tenant has provided insufficient evidence to support that there was significant damage or loss that has been caused either deliberately or through negligence from the Landlords. In light of the above, I

dismiss the Tenant's claim for moving costs and aggravated damaged without leave to reapply.

Conclusion

I find that the monetary compensation in the amount of \$325.00 that J.R. had previously paid to the Tenant is reasonable and sufficient based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities. As such, I dismiss the Tenant's claim for further compensation 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: April 25, 2019

Residential Tenancy Branch