



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, RP, MNDC, FF

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties confirmed the tenant served the landlord with all of the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed the landlord served the tenant with the submitted documentary evidence by posting to the rental unit door. Neither party raised any service issues. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served with the notice of hearing package and the submitted documentary evidence as per section 90 of the Act.

During the hearing the tenant requested that the landlord provide notice to enter the rental property as per the Residential Tenancy Act. Counsel for the landlord stated that the landlord has no issues regarding this and that the landlord agrees to provide notice as per the Act. As such, no further action is required for this portion of the tenant's application.

Extensive discussions over a 64 minute period as resulted in an adjournment due to a lack of time. Both parties were advised that an interim decision would be drafted and sent to both parties. Attached to the interim decision will be a notice of an adjournment providing both parties the date and instructions for the next date. Both parties were advised that no new evidence was to be submitted, nor would it be accepted. Both parties were also advised that no amendments may be made changing the application.

On September 30, 2019 the hearing was resumed with both parties.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation and recovery of the filing fee?

Is the tenant entitled to an order for repairs?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on January 15, 2018 on a fixed term tenancy ending on May 14, 2018 and then thereafter on a month-to-month basis as per the signed tenancy agreement dated December 4, 2017.

The tenant seeks a clarified monetary claim of \$23,795.00 which consists of:

\$20,000.00	Pain and Suffering
\$3,700.00	Reimbursement and inconvenience
\$55.00	Glass replacement
\$40.00	Pain Medication

The tenant seeks monetary compensation for slipping and falling from the deck which has resulted in the tenant suffering an injury to his shoulder. The tenants argue that he has suffered pain and suffering due to the landlord's neglect in complying with the local building codes. The tenant stated that he suffered an injury to his shoulder due to falling off the deck which does not have a guard rail and does not meet health and safety codes. The local authority was contacted and they are acting on the tenant's complaints for the landlord to comply with the building codes.

The tenant stated that he seeks compensation for pain and suffering, reimbursement/inconvenience and the cost of pain medication for \$20,000.00. This consists of \$10,000.00 in lost wages due to a loss of a range of motion for a 3 month period. The tenant states that previously he could cut 2 to 3 loads of firewood a day which is equal to approximately \$300.00 per load. This includes \$5,000.00 for the loss of sleep due to pain from the ongoing injury and \$5,000.00 for future physio therapy, medication and doctors' visits. The tenant also seeks \$3,700.00 for reimbursement/inconvenience for the loss of use of a 15 feet by 10 feet area that was supposed to be for his vehicle storage. The tenant claims that as part of the rent paid he has suffered a loss of \$200.00 per month for a 17 month period. The tenant stated this was an arbitrary amount based on what he felt was fair. The tenant seeks \$55.00 for reimbursement of a glass panel. The tenant argues that he paid for replacement of a glass panel that his son had damaged by playing soccer and kicking a ball at which broke the glass. The tenant stated that he was notified by the landlord of the damage and had paid for glass replacement soon thereafter. The tenant claims because of the landlord restricting access to the front yard, his son was forced to play in this other area which caused the damage. The tenant also seeks \$40.00 for reimbursement of medications prescribed by the doctor for pain management due to the injury suffered falling of the deck.

The landlord disputes the tenant's claims arguing that no proof of injury as well as no proof of loss of wages or expenses of medications bought has been provided to the landlord or the Residential Tenancy Branch. The landlord has argued that there are lots of ways an injury of this nature could occur, but that the tenant has failed to provide proof of cause as there is no medical evidence for the injury. The landlord also argues the tenant's injury according to the tenant occurred on May 26, 2019 and the tenant was working on his vehicle the next day without any issues. The landlord stated that the tenant was witnessed on June 7, 2019 loading items into his truck with no issues. The landlord has submitted an email dated July 11, 2019 which shows that the complaint file was closed by the local authority. The landlord argues that the tenant's lease/signed tenancy agreement provides for a "limited use of yard" for the tenant. The landlord clarified the area indicated by the tenant was an area designated that was to be kept clear to allow the landlord access to the workshop and that the tenant had no expectation of use in that area. The landlord noted that the signed tenancy agreement allows for parking of 4 vehicles, but the tenant had 6 vehicles and a trailer on the property.

The tenant seeks repairs to the deck as it was built without permits and does not meet local municipal building code. The tenant argues that the deck railing does not meet the local codes for safety. The Landlord disputes the tenant's claims arguing that the local authority issues have been resolved and that the deck is not contravening any local bylaws. The tenant has referenced two photographs of emails of records from the local authority that a complaint was filed, but no details provided. The landlord has referenced an email dated July 11, 2019 which shows that the local authority has closed their file and that the landlord is not in contravention of any codes.

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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In this case, I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Although the tenant claims that he fell off the deck and suffered a shoulder injury, this is disputed by the landlord. The landlord has indicated that such an injury could result from any number of activities. As evidence in support of his claim the tenant relies on a doctor's note confirming the tenant's attendance on May 27th after an accident injuring his right shoulder falling off the deck on May 25th. I note that there is no follow up diagnosis by the doctor or results from the MRI scan ordered. On this basis, I find that the tenant has failed to provide sufficient evidence of proof of an injury or that it was caused through the neglect or inaction of the landlord. The tenant has also failed to provide sufficient evidence of any proof of loss or any expenses incurred. On the tenant's claim for loss of use, the tenant has failed. The area in which the tenant claims a loss of use is not that where the tenant has an expectation of exclusive use as part of the tenancy agreement. I also find that as it is clear that the tenant's son damaged the glass that the tenant is not justified in seeking compensation for damage caused his son. On this basis, I find that the tenant's entire claim has failed and is dismissed.

Conclusion

The tenant's entire 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: October 9, 2019

Residential Tenancy Branch