



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, OLC, LRE, LAT, FFT

Introduction

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

- cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 16, 2019 ("10 Day Notice"), pursuant to section 46;
- 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 landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The three landlords did not attend this hearing, which lasted approximately 32 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant confirmed that he served three separate copies of the tenant's application for dispute resolution, notice of hearing, and amendment to add a monetary claim, to the three landlords on October 16, 2019, by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that all three landlords were deemed served with the tenant's application, notice of hearing, and amendment on October 21, 2019, five days after their registered mailings.

The tenant stated that his wife personally served the landlords with the tenant's evidence package on October 29, 2019. I notified the tenant that I could not consider his evidence package at the hearing or in my decision because it was served and received by the landlords late, less than 14 days before this hearing, contrary to Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*.

At the outset of the hearing, the tenant confirmed that he vacated the rental unit and he did not require any of the claims in his application, except for the monetary order and the filing fee. Accordingly, these portions of the tenant's application are dismissed without leave to reapply.

Issues to be Decided

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 recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified regarding the following facts. This tenancy began on April 15, 2019 and ended on October 29, 2019. Monthly rent in the amount of \$1,125.00 was payable on the 15th day of each month. A security deposit of \$550.00 was paid by the tenant and the landlords continue to retain this deposit. A written tenancy agreement was signed by both parties.

The tenant seeks \$2,000.00 for monetary compensation, plus the \$100.00 application filing fee. The tenant stated that on October 14, 2019, he provided a verbal notice to vacate the rental unit, to the landlords. He said that the landlords pulled his collar, tried to assault him and threatened him. He claimed that he called the police, they attended and spoke to the landlords. He explained that after this incident, the landlords served him with the 10 Day Notice. He maintained that the landlords turned off the heat, causing him to freeze, so he called the police again, and the police told the landlords to reconnect the heat.

The tenant stated that he and his wife suffered mental stress, harassment, and time off work, due to the landlords' actions. He confirmed that his wife missed 8 to 10 days from work and earns \$1,000.00 per week. He explained that he missed work and earns \$500.00 per week on a part-time basis. He said that he pays \$18,000.00 in school tuition fees. He maintained that there were mice inside the rental unit. He maintained that he suffered an injury to his head because a shelf in the bathroom at the rental unit fell on him. He stated that it could have hit his child and the shelf ended up breaking the toilet pan in the bathroom. The tenant confirmed that he did not provide copies of police reports, employment records or medical records with this application.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant 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 landlords 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 tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application of \$2,000.00 without leave to reapply. The tenant was unable to provide a breakdown for the above amount. I find that the tenant was unable to prove parts 2, 3 and 4 of the above test.

The tenant claimed that the landlords harassed and tried to assault him. However, these are criminal claims that are not within my jurisdiction of tenancy-related matters at the RTB. The tenant did not provide a copy of any police reports, indicating the date, location, and details of the police incidents that he said occurred at the rental unit.

The tenant claimed that him and his wife missed time off from work and lost wages, due to the landlords. However, the tenant failed to provide copies of paystubs, employment letters, or other documents to verify his claims of wage loss.

The tenant stated that him and his wife suffered mental stress and had to deal with mice in the rental unit, and that he also suffered a head injury. However, the tenant confirmed that he did not seek any medical treatment and did not have medical records to substantiate his claim.

The tenant maintained that the landlords did not return his security deposit. However, the tenant did not apply for its return in this application or his amendment. Therefore, the tenant's security deposit must be dealt with in accordance with section 38 of the *Act*.

As the tenant was unsuccessful in this application, I find that he is not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenant's entire application is dismissed 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: November 12, 2019

Residential Tenancy Branch