



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- A monetary order for damages or compensation pursuant to section 67.

The tenant attended the hearing and the landlord attended the hearing represented by his agent/son PM ("landlord"). As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. The tenant advised he received the landlord's evidence the night before the hearing however stated he did not require an adjournment to consider the landlord's evidence. Both parties were prepared to deal with the matters of the application.

Issue(s) to be Decided

Is the tenant entitled to compensation pursuant to section 67?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The tenancy involves a lower level unit in a house with three rental units. The tenancy began on January 1, 2011 and rent was originally set at \$450.00 per month. A security deposit of \$230.00 was collected by the landlord and returned to the tenant at the end of the tenancy.

The tenant provided the following testimony. A fire happened in the house on July 12, 2019, however the tenant does not know the details of how the fire began. The tenant attributes the fire to faulty wiring in the home and provided 3 reasons as to why he believes this is so. First, when he installed an air purifier in his rental unit, the landlord advised him not to run it continually which leads the tenant to believe it's because the wiring in the house is faulty. Second, if the house's electrical wiring is not to code, there is a good chance the landlord's insurance claim would not be approved. As proof, the tenant testified the windows are still boarded up and some of the tenant's items damaged in the fire are still left outside. Nothing has been done to restore the home or remove the items. Third, he spoke to the landlord who advised him he wasn't sure the insurance would be approved. The date of this conversation was not provided in testimony.

The tenant testified he did not purchase tenant insurance. The reason he didn't purchase tenant insurance was because of his naivete. Due to the fire, the tenant's belongings were damaged or destroyed as they were either burned or contaminated. The tenant claims for \$7,000.00 in lost items and has provided receipts for some of the items he's repurchased. The parties agree the tenancy ended by mutual agreement to end tenancy on July 24, 2019.

The landlord provided the following testimony. There was a fire in the house caused by a fallen power line on July 12, 2019. The fire was investigated by the fire inspector from the city who provided an email to the fire chief the same evening. The email was read into the record during the hearing and provided as documentary evidence. Relevant portions of the email are reproduced below:

The call originally came in as a wires down call. Multiple BC Hydro crews were already on scene dealing with the power issue when I arrived. Upon the first-in crew's arrival, they noted the wires were, in fact, down, and there was a fire on the power pole.

...

Investigation showed that the fire originated in a small storage/closet space under the stairs. It is in that space that the main electrical panel for the home is. There were no other sources of heat or ignition within that

space. Between examination of the physical space and conversations with the Hydro crew and manager, it was determined that the fire was electrical in nature, and likely caused by a power surge created when the primary electrical line collapsed on to the service line for the residence.

The landlord disputes the tenant's argument that faulty wiring in the house caused the fire. The conversation with the tenant about not running the air purifier continually was to keep the cost of electricity down as the landlord included electricity in the rent.

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.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

First, I am not satisfied the fire was due to faulty wiring in the home as argued by the tenant. While the tenant has provided the elements that lead him to believe that the home suffered from faulty wiring, he has not met the standard to prove to me that his conclusions are correct. The tenant's suspicion that the home remained unrepaired due to the landlord's insurance ineligibility has not been proven. His argument that he was told not to use the air purifier because the home is wired incorrectly is likewise conjecture. The tenant did not provide testimony or documentary evidence of blown fuses or appliances burning out, giving me little evidence to corroborate his version of the truth.

Second, the landlord has provided compelling uncontroverted evidence from the fire inspector who wrote that the fire was *likely caused by a power surge created when the primary electrical line collapsed on to the service line for the residence*. As the applicant, the tenant's onus is to prove to me that he suffered from a damage resulting

from the landlord's violation of the *Act*, regulations or tenancy agreement, I find the tenant has not met the standard. Point 2 of the 4-point test has not been met.

Lastly, the tenant testified he did not purchase tenant insurance. The purpose of having tenant insurance is to provide tenants with compensation if the tenant's personal property is damaged by things like theft, fire, smoke damage or vandalism. I find the tenant failed to mitigate his damages by not purchasing tenant insurance and therefore failed to mitigate his damages, point 4 of the 4-point test.

The tenant has failed to establish all 4 points of the 4-point test. The tenant's application for a monetary order pursuant to section 67 is dismissed. As the tenant was not successful in his claim, the filing fee will not be recovered.

Conclusion

The tenant's claim 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: February 04, 2020

Residential Tenancy Branch