



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS AGENCIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT OLC FFT

Introduction

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

- a monetary order for compensation for loss, emergency repairs, or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

CP ("landlord") appeared as agent for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application') and amendment. In accordance with section 89 of the *Act*, I find that the landlord duly served with the Application and amendment. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed with the hearing.

Issues(s) to be Decided

Is the tenant entitled to monetary compensation for loss, or other money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began on May 1, 2018, with monthly rent is set at \$1,500.00, plus an additional \$60.00 per month for parking. Payable on the first of every month. The landlord collected a security deposit in the amount of \$750.00, which the landlord still holds.

The tenant is seeking a monetary order in the amount of \$400.00 in compensation for lost income due to an incident that took place on January 1, 2020. The tenant testified that he was scheduled to work a 12 hour shift from 5:00 p.m. to 5:00 a.m. as a taxi driver that evening, but was unable to arrive on time due to damage to the garage gate. The tenant testified that he had worked the prior night and made at least \$530.00. The tenant testified that he went to the parking garage around 4:35 p.m. to get his vehicle, and discovered that the garage door was broken. The tenant testified that at 5:40 p.m., the gate was still not repaired. The tenant testified that he attempted to get to work through alternate means such as taking the bus, or calling a cab, but because it was New Year's Day, he was unable to arrive on time to start his shift. The tenant feels that the landlord did not take proper precautions to prevent such an incident such as installing sensors or bright stickers to warn drivers of the gate.

The landlord is disputing the tenant's claim as they felt that the incident took place due to an accident where a vehicle had hit the parkade gate, and a contractor was dispatched as soon as possible to perform repairs. The landlord feels that they have met all the requirements as a landlord, and that any losses the tenant has suffered was not due to any contravention of the *Act* or tenancy agreement.

The tenant is also requesting compensation for harassment by the landlord in an undetermined amount. The tenant confirmed in the hearing that he was unable to provide an exact dollar figure, but that he wished to be compensated for future moving costs. The tenant detailed several examples of continued harassment by the landlord, including posting of 10 Day Notices for Unpaid rent on his door, chargebacks for plumbing services for dealing with legitimate plumbing issues in his suite, failure to deal with pest/silverfish issues in his suite, and failing to respond to his inquiries or issues in a timely manner.

The tenant also requested an order that the landlord deal with the outstanding silverfish issue in his suite, including paying for any costs associated with pet control or treatment.

The landlord disputes the allegations of harassment. The landlord testified that the tenant was served with a 10 Day Notice and follow up in accordance with the *Act*. The landlord responded that the tenant was charged back for the plumbing as this is the usual procedure if it is determined that the tenant was responsible for the charge, or if no problem was found.

The landlord responded that the tenant was still in possession of the glue traps for catching the silverfish samples, and the tenant had yet to return them to be analyzed by the pest control company. During the hearing, both parties agreed that the tenant would make arrangements with the building manager to retrieve the glue traps. The tenant requested that he be given 2 hours notice, and that any time after 1:00 p.m., starting on June 30, 2020 would work for the tenant.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *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.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.

4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Based on the evidence before me, I accept that the tenant suffered a monetary loss of at least \$400.00. However, I am not satisfied that this loss stemmed directly from a violation of the tenancy agreement or contravention of the *Act* on part of the landlord.

Although I acknowledge that the tenant was impacted by the incident that took place, and resulting inability to access his car for a period of time, I find that this incident was due to an unforeseeable event that took place beyond the landlord's control. I find that the landlord had acted in a timely manner to repair the damage, and due to unfortunate circumstances the incident and resulting repairs prevented the tenant from being able to exit the parkade in time to arrive for his shift. Despite the tenant's concerns, I am not satisfied that the evidence provided supports his belief that this loss could have been prevented or mitigated by the landlord. Although I find that the tenant did support his loss, I am not satisfied that this loss stemmed directly from the actions of the landlord. For this reason, I dismiss the tenant's monetary claim for losses without leave to reapply.

The tenant also applied for monetary compensation for harassment. In assessing this claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I have considered the testimony and evidence of both parties, and although I acknowledge the tenant's concerns such as the embarrassment of having notices posted on his door, I find that the landlord had posted these notices in accordance with section 88(g) of the *Act* by "attaching a copy to a door or other conspicuous place at the address at which the person resides".

I find that the landlord had provided reasonable explanations in response to the tenant's other concerns such as the chargeback of invoices, and the ongoing silverfish issues. I find that the evidence presented by the tenant does not sufficiently support the tenant's allegations of harassment. Furthermore, although the tenant requested compensation, I find that he failed to establish the amount of loss claimed, either referenced and

supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damages the tenant is seeking in this application. Furthermore, I find that the tenant failed to establish how his suffering was due to the deliberate or negligent act or omission of the landlord. On this basis I dismiss the tenant's monetary claim for harassment without leave to reapply.

As both parties agreed to next step in dealing with the silverfish issue, and as this issue is still ongoing, I find that no further orders are required. Accordingly, I dismiss this portion of the tenant's application with leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in her application, the tenant must bear the cost of this filing fee.

Conclusion

During the hearing, both parties agreed that the tenant would make arrangements with the building manager to retrieve the glue traps. The tenant requested that he be given 2 hours notice, and that any time after 1:00 p.m., starting on June 30, 2020 would work for the tenant. As both parties agreed to next step in dealing with the silverfish issue, and as this issue is still ongoing, I find that no further orders are required. Accordingly, I dismiss this portion of the tenant's application with leave to reapply.

I dismiss the remainder of the tenant's application 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: July 8, 2020

Residential Tenancy Branch