



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 14, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order that the Landlord comply with the Act, tenancy agreement, or regulations;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant as well as the Landlord's Agents, and the Landlord's Counsel appeared at the appointed time of the hearing.

At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

Preliminary Matters

At the start of the hearing, the Tenant stated that the Landlord completed the necessary repairs to the rental unit. As such, the Tenant was no longer seeking an order that the Landlord comply with the Act. The Tenant requested to amend his Application to withdraw this claim. The Tenant's Application was amended accordingly. The hearing continued based on the Tenant's Application for monetary compensation.

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 Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties agreed to the following; the tenancy began on February 15, 2016. Rent in the amount of \$950.00 is due to the Landlord by the first day of each month, as well as a security deposit in the amount of \$450.00 was paid to the Landlord.

The parties agreed that there was a leak in the roof of the rental property which caused some damage to the rental unit. Both parties acknowledged their efforts in securing a roofer to repair the leak, however, given the time of year, and the remote location of the rental property, the repair took months to complete. The Tenant stated that the ceiling, containing asbestos collapsed into the rental unit, sending debris and asbestos throughout the rental unit.

The Tenant was displaced from the rental unit between November 13, 2019 to May 1, 2020. During this time the Tenant was not required to pay rent to the Landlord, as he was staying in a different accommodation. The parties agreed that the Landlord paid \$4,100.00 of the Tenant's rent during the time he was displaced. The Landlord had also reimbursed the Tenant for the cost of his utilities at the rental property in the amount of \$500.00, and stored his hard possessions in a trailer while the roof repair took place.

The Tenant stated that he returned to the rental unit once the repairs were completed and found that his hard possession which were stored in the trailer were damaged from the cold temperature outside, which required the Tenant to dispose of all these items. The Tenant stated that he was also required to dispose of all his soft possession due to the asbestos contamination. The Tenant provided a 4-page monetary worksheet comprised of all the items the Tenant is claiming he disposed of in the amount of \$19,920.65. During the hearing, the Tenant stated that he has not yet purchased these items, however, the amounts provided are an estimate of the replacement costs.

The Tenant is claiming \$3,812.84 for the remaining three months of rent the Tenant paid at the other accommodation while the work was being completed at the rental property. The Tenant is claiming reimbursement for utilities that he was required to pay while being displaced from the rental unit in the amount of \$934.09.

The Tenant is claiming \$2,000.00 for pain and suffering after being displaced from the rental unit for 7 months as a result of the roof leak and asbestos contamination. Lastly, the Tenant is seeking reimbursement for legal fees in the amount of \$378.01. If successful, the Tenant is seeking the return of the filing fee paid to make the Application.

The Landlord's Agent and Counsel responded by stating that they do not feel as though the Tenant is entitled to any further compensation aside from the compensation, they have already provided to the Tenant.

The Landlord's Counsel submits that the Landlord did not breach the Act in relation to the damage to the rental unit or the loss of the Tenant's possessions. The Landlord's Agents stated that there had been no indication that the roof required repair prior to the commencement of the leak. The Landlord's Agents stated that the repairs were made as soon as possible.

As for the Tenant's monetary claims, the Landlord's counsel submits that the Tenant has not demonstrated their loss, in that the Tenant did not provide evidence that he was in possession of the items he is claiming for. Furthermore, the Landlord's Counsel submits that the Tenant provided an estimate of the cost to replace the items that he is alleging were damaged. During the hearing, the Tenant confirmed that he had not yet purchased the items he is claiming for. As such, it is the Landlord's position that the Tenant has not yet suffered a financial loss.

Lastly, the Landlord's counsel submits that the Tenant failed to renew his renters insurance which was a requirement of the tenancy. During the hearing, the Tenant stated that he let his insurance elapse and that he was aware that it was a requirement of his tenancy, but that he failed to renew the insurance plan. As such, the Landlord's Counsel stated that the Tenant has not mitigated their loss.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenant, 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*. Pursuant to Residential Tenancy Policy Guideline #16 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, I accept that the roof had a leak, which over time resulted in damage to the ceiling of the rental unit causing debris and asbestos to spread through the rental property. I accept that both parties made immediate attempts at securing a roofer to repair the leak in a timely manner, however, given the time of year, and the remote location of the rental property, the repair took months to complete. As such, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord breached the *Act*, by not taking action to repair the leak.

While I accept that the Tenant suffered a loss of his soft possession as a result of the asbestos contamination, I find that the Tenant provided insufficient evidence to

demonstrate which possession were lost as a result. I further find that the Tenant provided insufficient evidence to demonstrate that his hard possession where also damaged as a result of being improperly stored throughout the winter.

While the Tenant provided an estimate of the cost associated with replacement all the items he is claiming were lost, during the hearing, the Tenant stated that he has not yet replaced these items. As such, I am not satisfied on the value of the Tenant's loss.

During the hearing, the parties agreed that the Tenant is required to maintain renter's insurance. The Tenant acknowledged that he let his insurance lapse and has not yet renewed his insurance plan. As such, I find that the Tenant failed to mitigate his loss by not having insurance to cover his losses in the event that an incident such as this took place. I dismiss the Tenant's Application for monetary compensation in the amount of \$19,920.65 for the replacement of his possession without leave to reapply.

The Tenant is also claiming for \$3,812.84 in relation to the remaining three months of rent the Tenant paid at the other accommodation while the work was being completed at the rental property. The Tenant is also claiming for utilities in the amount of \$934.09. I accept that the Landlord did not charge the Tenant rent while the repairs were ongoing at the rental property. As such, I find that it is reasonable to expect that the Tenant pays rent and utilities at a different accommodation while he was unable to occupy the rental unit. I dismiss this portion of the Tenant Application without leave to reapply.

The Tenant is claiming \$2,000.00 for pain and suffering after being displaced from the rental unit for 7 months as a result of the roof leak and asbestos contamination. Lastly, the Tenant is seeking reimbursement for legal fees in the amount of \$378.01. As I have previously found that the Landlord did not breach the Act, I find that the Tenant is not entitled to monetary compensation for being displaced as a result of the roof leak and asbestos contamination. Further, I find that the cost of legal fees is not recoverable under the *Act*.

As the Tenant was not successful with his Application, I find that he is not entitled to the return of the filing fee.

Conclusion

I dismiss the Tenant's Application for compensation relating to damage or loss 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: September 18, 2020

Residential Tenancy Branch