



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agents (the "landlords").

As both parties were present service was confirmed. The parties each testified that they were duly served with the respective materials. Based on the testimonies I find each party served in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the parties agreed that the corporate respondent's name was incorrect in the original application and provided the correct name. The corrected name of the respondent is used in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover the filing fee from the landlord?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in July, 2018. The current monthly rent is \$370.00 payable on the first of each month. The rental unit is a suite in a multi-unit building.

The tenant submits that on or about August 3, 2020 their bicycle was stolen from the parking area of the rental unit. The tenant reported the theft to the police. The tenant submits that the theft occurred due to the rules of the rental building preventing bicycles from being stored in rental units or common areas other than the dedicated bicycle storage lockers. The tenant testified that the storage area is easily accessible and also that some doors must have been propped open by other residents of the building.

The tenant submits that the rules of the rental property are enforced inconsistently with other occupants of the building permitted to leave bicycles on their patios. The tenant submitted some photographs of the rental property as evidence of other units with bicycles stored on the patios. The tenant submits into documentary evidence an estimate for a \$10,080.00 bicycle and says that this is the value of the item stolen.

The landlord submits that the bicycle storage area is accessible by tenants with FOBS and is secured with standard strength locks. The landlords testified that the rental property uses locks and security systems consistent with industry standards. The landlord gave evidence that they enforce their rules consistently for all residents and those units that appear to be storing bicycles on patios in contravention of the rules have been issued warnings or penalties.

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.

I find that the tenant has not met their evidentiary burden on a balance of probabilities to demonstrate that there has been any breach on the part of the landlord giving rise to a monetary claim. Based on the evidence of the parties I find that the rental property has certain rules regarding storage of bicycles and these are outlined clearly in the tenancy agreement, property rules and orientation materials. I accept the landlord's submission that rules are enforced consistently. I do not find the photographs submitted by the tenant to be evidence of inconsistent enforcement but simply that some residents are in violation. I do not find the fact that some occupants breach the rules to be evidence that they are permitted to do so by the landlord or that the rules are only enforced as against the tenant.

I further find that the landlord provides secure storage areas for bicycles on the premises and that they contain appropriate locks and security systems. I do not find the tenant's submission that these areas are vulnerable to be particularly convincing. A landlord cannot prevent all property theft but based on the materials submitted I find that the security in place was reasonable for the items stored and the neighborhood. I find that any theft that occurred is not attributable to the landlord but simply the commitment of the thief and an unfortunate combination of circumstance that made the theft possible.

I find that the tenant has not demonstrated that any loss they have suffered is a result of the unreasonable actions or inactions of the landlord. Consequently, I must dismiss the tenant's application.

Conclusion

The tenant's 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 26, 2020

Residential Tenancy Branch