



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ward and Burke Microtunnelling and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes: FFL MNDL-S

Introduction

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

- a monetary order for money owed or compensation monetary loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

ST ("tenant") appeared as agent for the tenant 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 tenant confirmed receipt of the landlord's application and evidence. In accordance with sections 88, 89, and 90 of the *Act*, I find that the tenant duly served with the landlord's application and evidence. The tenant did not submit any written evidence for the hearing.

Issues(s) to be Decided

Is the landlord entitled to monetary compensation for losses?

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

Background and Evidence

This tenancy began on June 1, 2019, and ended on July 15, 2020. Monthly rent was set at \$1,875.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$937.00, which the landlord still holds. The rental unit was rented out to the tenant, a company, in order to house its employees. The suite was occupied by the employee and his family. The agent for the company attended the hearing.

The landlord is seeking a monetary order in the amount of \$236.25 in reimbursement for the cost of cleaning the balcony at the end of the tenancy, plus recovery of the filing fee. The landlord submitted a receipt in that amount to support this loss, which the landlord attributes to the tenant's failure to keep the balcony in reasonably clean condition during the tenancy.

The landlord testified that he had resided in the rental unit for 5 years before this tenancy, and never had any issues. The landlord testified that the occupant had allowed pigeons to occupy the balcony, build nests, and lay eggs, which left the balcony in an extremely unsanitary condition, and required special cleaning and removal by an exterminator. The landlord submitted photos as well as in condition inspection reports to show the state of the balcony.

The agent for the tenant does not dispute that a pigeon had nested on the balcony, and had laid eggs there. The agent testified that the employee was working fifteen to sixteen hour days, and rarely used the balcony which was located on the twenty fourth floor. The agent testified that the tenant had noticed the pigeon and eggs, and did not want to disturb the pigeon, and was unsure of what steps to take. The agent testified that the landlord was notified, and disputes that the issue was caused by the occupant.

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 landlord bears the burden of establishing their claim on the balance of probabilities. The landlord 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 landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 32 of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I have considered the testimony of both parties and written evidence submitted by the landlord. I find that it was undisputed that the landlord did suffer a monetary loss

associated with the cleanup of the balcony and removal of a pigeon. I must, however, consider whether the landlord had provided sufficient evidence to establish that this loss was due to the tenant's failure to fulfill their obligations as required by section 32 of the *Act* as stated above.

In consideration of the evidence before me, I am satisfied that the tenant failed to ensure that the balcony was maintained in a sanitary state during this tenancy. Although I accept the testimony of the agent that the tenant worked long hours, and infrequently used the balcony, I find that the tenant and their occupants had an obligation to ensure that the balcony was kept in a clean and sanitary manner. I am satisfied that the photos and inspection report submitted by the landlord accurately depict the state of the balcony at the end of the tenancy. Although I am not completely satisfied that the issue with the pigeon can be attributed solely to the tenant's actions, I find that the tenant did contribute to the losses by failing to maintain the cleanliness of the balcony. I find that the losses that the landlord incurred would have been mitigated by more attention to the balcony by way of more frequent inspections and cleaning by the tenant, which fell within the realm of responsibility of the tenant during this tenancy.

As stated above, the landlord bears the burden of establishing their claim. Although I am not satisfied that the tenant was solely responsible for the issue with the nesting pigeon, and the resulting losses claimed by the landlord due to the pigeon, I am satisfied that the landlord did provide sufficient evidence to support that the tenant did not comply with section 32(2) of the *Act*, which states that "*a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access*". I find that the landlord did establish that the tenant contributed, in part, to the losses claimed by failing to regularly and properly inspect and clean the balcony. Accordingly, I allow the landlord partial compensation equivalent to half of the losses claimed associated with the cleaning and removal of the pigeon and nest.

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 landlord was only partially successful in their monetary claim, I find that they are only entitled to half of the cost of the filing fee.

The landlord continues to hold the tenant's security deposit of \$937.00. In accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain a portion of the tenant's security deposit in partial satisfaction of the monetary claim.

Conclusion

The allow the landlord to recovery half of the cost of the cleaning and pigeon removal, as well as half of the filing fee.

I issue a Monetary Order in the amount of \$768.87 in the tenant's favour for the return of the remainder of the tenant's security deposit.

Monetary Order for losses	\$118.13
Half of Filing Fee	50.00
Less Deposit Held by Landlord	-937.00
Total Monetary Order to Tenant	\$768.87

The tenant is provided with this Order in the above terms and the landlord must be served with a copy of this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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, 2020

Residential Tenancy Branch