



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: MNDCT

Introduction

The tenant applied for compensation under section 67 of the *Residential Tenancy Act*.

The arbitration hearing held on February 9, 2021 was attended by the tenant, her witness, her legal counsel, and the landlords. No issues of service were raised by the parties. I briefly note that a third party (unrelated to this dispute) accidentally dialled into the hearing; I was able to confirm that party's hearing information and they exited. This hearing did not commence until approximately 1:35 PM.

Issue

Is the tenant entitled to compensation?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issue in the application. Only relevant evidence needed to explain my decision is reproduced below.

There are essentially two components of the tenant's application: (1) compensation sought in relation to the loss and damage of personal property that came about as a result of a break and enter that occurred on June 21, 2020; and (2) compensation sought in relation to what are alleged to be unlawful rent increases between 2018 and 2020. I will address both claims below in their own sections.

The tenancy in this dispute began on July 1, 2015 and ended on or about June 22, 2020. A copy of the written Residential Tenancy Agreement was submitted into evidence.

1. Claim for Compensation Related to Break and Enter Event

The landlords' son or a third party – neither party was entirely clear on the culprit – broke into the tenant's rental unit on June 21, 2020 and destroyed a significant amount of the tenant's personal property.

The tenant testified, and submitted in her written submission, that "Prior to this event, I had more than one conversation with the landlords regarding my concerns about [the son]. I had informed them several times, including on 17 June 2020, that I was concerned about his behaviour, and that I didn't feel safe when he was on the property." The son apparently exhibited rather bizarre behavior. The tenant did not, however, provide an explanation or description as to why she was concerned about his behavior or why she in fact felt unsafe.

The landlords argued that despite their son being charged (with court proceedings currently underway), their son does not have a criminal record. Moreover, they are uncertain as to whether it was him who actually broke into the rental unit. They argued that there was "nothing we did to facilitate" the break and enter and that they could not have anticipated that this would occur. There is, they submitted, "nothing we could've done to prevent this from happening."

The tenant seeks in excess of \$3,000.00 in compensation from the landlords for losses related to the loss and damage of her personal property, and, for veterinarian medication for her cat which was present during the break and enter.

2. Claim for Compensation Related to Rent Increases

In respect of the rent increases, the rent when the tenancy began was \$800.00, later increased to \$850.00 (Neither party provided any evidence in respect of how the rent increased from \$800.00 to \$850.00.)

On June 29, 2018 the tenant signed a document whereby she agreed to a rent increase of \$100.00 per month (to \$950.00) effective October 1, 2018. A copy of this agreement was submitted into evidence by the landlords. Accompanying this agreement was a two-page Notice of Rent Increase which reflected the same information.

On June 29, 2019 the tenant signed a document whereby she agreed to a rent increase of \$100.00 per month (to \$1,150.00) effective October 1, 2019. An accompanying Notice of Rent Increase was also included with that agreement.

The tenant testified that she signed the documents wherein she agreed to the rent increases because she was “not aware of my rights when I signed the agreements.” Moreover, she described the landlords essentially foisting the unsigned agreement upon her with little time to deliberate. She explained that she signed them because she was afraid of being evicted.

The landlords testified that they provided unsigned copies of the agreements to the tenant for her perusal. They further remarked that the tenant has been a renter “her whole life” and they therefore find it difficult to accept her assertion that she is somehow not aware of her rights.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the *Residential Tenancy Act* (the “Act”) states that if a party does not comply with the Act, the regulations or a tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Further, a party claiming compensation for damage or loss that results from the other's non-compliance must do whatever is reasonable to minimize the damage or loss.

1. Claim for Compensation Related to Break and Enter Event

Tenant’s counsel argued that the landlords breached section 28 of the Act. Section 28 of the Act states that

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In this case, tenant's counsel argued that the tenant's monetary loss in respect of the loss and damage to her property were the result of the break and enter. The break and enter, he argued, resulted from the landlords' negligence. Thus, it follows that the landlords' negligence resulted in the tenants' property loss (and purportedly the costs related to the cat). He submitted that the landlords had "some indication" that the landlords' son was "unpredictable" and that the tenant had at some point in the past told the landlords about her concerns. The landlords, counsel argued, took no steps to keep the son from returning to the residential property, and that he was clearly present in the property when the break and enter occurred.

While the landlords had, I find, "some indication" as to the son's unpredictable nature, they pointed out that he has no criminal record, and that there is "nothing we did to facilitate entry into the rental unit." Further, the landlords argued – and I am persuaded by this argument – that it is not on them to anticipate that a break and enter would occur. There is, they reiterated, "nothing we could've done to prevent this from occurring."

In order for me to find that the landlords breached their duty of care imposed on them by statute, I must be satisfied that all of the elements of negligence are met. One crucial element of negligence that must be proven is that the party who bears the duty of care must have known that there existed a reasonably foreseeable risk resulting from their action or inaction.

There is, I conclude, insufficient evidence before me to find that the landlords could have anticipated that a third party's conduct would result in a break and enter, along with additional property destruction. A mere mention of a concern by the tenant more than a month earlier is insufficient for me to find that there existed a foreseeable risk that either their son or a third party would break into the tenant's home. Indeed, that the tenant provided a rhubarb pie to the son a week before the incident would suggest that there did not exist a reasonably foreseeable risk of harm. Or, in the alternative, that the risk of harm was so low as not to be considered reasonably foreseeable.

Thus, by application of this required component of negligence I cannot find that the landlords breached section 28 of the Act.

Certainly, the tenant's quiet enjoyment and freedom from unreasonable disturbance were affected, but in this case the fault of that lay entirely on the individual responsible for the break and enter and subsequent property destruction. Indeed, I am not without empathy to what could only have been an enormously terrifying experience. Having a

safe and secure home is essential to one's peace of mind, and the third party (whoever that is) who illegally entered the tenant's home and destroyed much of the tenant's property ought to be held accountable. However, I am unable to grant monetary relief to the tenant related to that loss, as the landlords have not breached the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving their claim for compensation arising from a breach of the Act by the landlords. This aspect of the tenant's application is therefore dismissed without leave to reapply.

2. Claim for Compensation Related to Rent Increases

In respect of this aspect of the tenant's claim, I first must turn those sections of the Act which cover rent increases.

Section 41 of the Act states that a landlord "must not increase rent except in accordance with this Part." Section 43(1) of the Act states that

A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

In this dispute, the tenant agreed in writing to the rent increases being imposed by the landlords. That she was somehow unaware of her legal rights under the Act or that she was "afraid of being evicted" does not release her from her previously agreeing to the rent increases. There is no evidence before me to suggest that the tenant signed the documents under duress. And, that the landlord visited her outside the rental unit with the documents, versus bringing the documents to the door of the rental unit, is irrelevant, and, I find, unrelated to whether the tenant had the capacity to consider, and then sign, the documents. Finally, as the tenant agreed in writing to the rent increases under section 43(1)(c) of the Act I need not consider whether those amounts were in accordance with the regulations as would be required under section 45(1)(a) of the Act. In summary, the landlords' rent increases were in compliance with the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for compensation related to what I find are lawful rent increases. This aspect of the tenant's application is therefore dismissed without leave to reapply.

Conclusion

I dismiss the tenant's application without leave to reapply.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: February 9, 2021

Residential Tenancy Branch