



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing dealt with the Tenant's application under the Residential Tenancy Act (the "Act") for:

- a Monetary Order of \$35,000.00 for the Tenant's monetary loss or money owed by the Landlord pursuant to sections 7 and 67; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The Tenant was assisted during the hearing by his wife.

All attendees at the hearing were advised that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

The parties did not raise any issues with respect to service of documents for dispute resolution. The Landlord acknowledged receipt of the Tenant's notice of dispute resolution proceeding package and documentary evidence (collectively, the "NDRP Package") delivered via registered mail. I find the Landlord was served with the NDRP Package on January 19, 2022 in accordance with section 88(c) and 89(1)(c) of the Act.

The Landlord confirmed he did not submit any documentary evidence and relied on oral testimony for this hearing.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or money owed by the Landlord?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties' tenancy ended on June 30, 2020.

In this application, the Tenant seeks compensation from the Landlord regarding a slip-and-fall incident that occurred on the rental property on January 13, 2020.

The rental unit was a separate suite located at the back of the house. The Landlord and his family resided in the main area of the property.

The Tenant testified that on January 13, 2020, at around 7:45 am in the morning, he fell and injured his shoulder while walking on the driveway of the rental property.

The Tenant submitted a photograph with a circle marking the location of his fall. In this photograph, the garage and driveway of the rental property can be seen on the right side, and a neighbour's property and driveway with a parked car can be seen on the left. The driveways of the two properties are connect side-by-side. The circled area marking the fall is in the middle of the photo, which appears to be an area at the end of a pathway leading to the rental unit at the back of the house and is at the edge of the Landlord's driveway. The Tenant testified that this photograph was taken after the snow had melted away, in or around March 2020.

The Tenant testified that when he fell, he was walking to his car which was parked along the street. The Tenant testified he was walking on the Landlord's side of the driveway, not the neighbour's side. The Tenant testified that it was snowing that morning—the "first snow" in that month, so the Landlord could not have cleaned before.

The Tenant testified that when he slipped, he fell on his right side and felt pain in his shoulder. The Tenant stated he screamed for help but no one heard him. The Tenant stated he was able to sit up and eventually stand up using his left hand. The Tenant testified he used the neighbour's parked car for support and called his wife for help.

The Tenant submitted a photograph which shows a portion of the neighbour's parked car and the driveway. The Tenant testified that this photo was taken when his wife came to help him. The Tenant stated that black ice can be seen from this photograph and that the driveway was not shovelled. The Tenant testified that the snow started in the night and the Landlord did not wake up to clean it.

The Tenant testified after he and his wife returned to the rental unit, they called the Landlord to inform the Landlord of the accident. The Tenant testified that afterwards they saw the Landlord's son cleaning the pathway from the rental unit to the front of the house.

The Tenant testified they called 911, but no ambulance came. The Tenant stated that at around 11:00 am, they went out to try and clean their car. The Tenant stated that they were unable to drive their car in the snow, so a neighbour helped drive the Tenant and his wife to the hospital.

The Tenant submitted a photo of the ground which was taken after the Tenant and his wife returned home from the hospital visit. This photograph shows a freshly shovelled and salted pathway.

The Tenant argued it is the Landlord's responsibility to clean the driveway and pathway, and that the Landlord had failed to do so. The Tenant argued that it is also the Landlord's responsibility to clean the pathway on the street based on clear "municipal requirements".

The Tenant testified that his injury has affected him both physically and financially. The Tenant testified he has had multiple operations. The Tenant testified he has been unable to perform daily activities using his right hand and required assistance from his wife. The Tenant testified he suffered agonizing pain and had to take strong medication. The Tenant testified he was initially unable to work due to his injury. The Tenant testified that since his operation, he has only been able to work a reduced workload. The Tenant testified that daily activities are still very affected and that he continues to have pain and discomfort in his shoulder.

The Tenant seeks compensation in the amount of \$35,000.00 for pain and suffering as well as loss of income.

The Tenant submitted the following additional documents in support of his application:

- photographs of the Tenant's injuries;
- letters from the Tenant's orthopedic surgeon dated March 2, 2020, September 3, 2020, October 19, 2020, and December 7, 2020;
- a letter from the Tenant's internal medicine physician dated July 8, 2020;
- surgical operation notes dated September 5, 2020;
- outpatient clinic consultation notes dated September 19, 2020; and

- a shoulder physical therapy referral form.

In response, the Landlord testified that he or his son cleaned the driveway every time it snowed. The Landlord testified that his driveway and his neighbour's driveway are common between their two properties. The Landlord stated that he and his neighbour would clean half or sometimes clean each other's driveways. The Landlord testified that he usually cleans as much as he can in the morning before leaving for work, and again in the evening after work.

The Landlord testified they use salt when cleaning, and this can be seen in the Tenant's photographs. The Landlord testified that the driveway is slanted so it is necessary to be careful when walking down towards the street.

The Landlord argued that if it was first snow as the Tenant alleged, there would not have been black ice on the same day as the Tenant claimed there had been.

When asked as to whether snow removal was a term of the parties' tenancy agreement, the Landlord checked and stated that it was not, but confirmed that he was cleaning everything at the time. The Landlord testified he wanted to make things as comfortable for the Tenant as possible.

The Landlord testified the Tenant had never complained about this incident to him before. The Landlord testified the Tenant told him they had found another place to live, and the Landlord returned their security deposit at the end of the tenancy.

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.

1. Is the Tenant entitled to compensation for monetary loss or money owed by the Landlord?

Section 7 of the Act 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.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

In addition, Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states as follows:

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, I find the Tenant's argument to be that the Landlord had failed to comply with section 32(1) of the Act, which states:

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.

Residential Tenancy Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises states that generally a “tenant living in a townhouse or multi-family dwelling who has exclusive use of the yard” is responsible for “clearing snow”, while the landlord is generally responsible for shovelling snow in “multi-unit residential complexes”.

Based on the evidence before me, I find the Tenant slipped and fell on the edge of the Landlord’s driveway, which is a common area that the Tenant shared with the Landlord. I also find the Landlord acknowledged that he and his family members have been clearing the snow on the driveway and pathway of the property. As such, I find that the Landlord is responsible for clearing the snow in this case.

However, for reasons that follow, I find the Tenant has not established, on a balance of probabilities, that the Landlord failed to maintain the condition of the driveway in accordance with the requirements of section 32(1) of the Act.

First, I find the Tenant gave inconsistent testimony regarding the weather conditions on or around January 13, 2020. I find the Tenant testified that there was black ice on the driveway which caused him to slip. However, I find Tenant also testified that the snow had started the night before, and that it was the first snow of the month such that it was not possible for the Landlord to clean before. I agree with the Landlord that such descriptions are contradictory.

Second, the Tenant submitted a single photograph of the driveway taken shortly after the tenant slipped and fell. I have reviewed this photo carefully, and find that the driveway does appear to have been shovelled and salted, though not immediately before the photo was taken. I find this photograph to be consistent with how a driveway might look the morning after it had been shovelled and salted the previous day.

Third, I find the Tenant emphasized how the snow had started in the night and that the Landlord did not wake up in time to clean it before the Tenant slipped in the morning. I

note the Tenant does not allege that the Landlord did not shovel the snow on a regular basis.

In my view, the Landlord's obligation to maintain the rental property under section 32(1) of the Act does not require the Landlord to ensure that the driveway is snow-free at all hours of the day and night. I find that section 32(1) would require the Landlord to clear the driveway within a reasonable time after each snowfall and to maintain it at reasonable intervals as needed.

For reference, sections 80(1) and (2) of the municipal by-law in the dispute city (By-Law No. 13007) require that snow and ice be removed from sidewalks and bordering walkways by no later than 10:00 am on the day following the snowfall, on every day except a holiday, as follows:

80. (1) Every owner or occupier of commercial, industrial or multi-family dwelling premises shall remove all snow and ice from any sidewalk or walkway bordering such premises not later than 1000 hours on the day following the snowfall, on every day except a holiday as defined in the *Interpretation Act*, R.S.B.C. 1996, c. 238 as amended.

(2) Every owner or occupier of single family or duplex residential dwellings shall remove all snow and ice from any sidewalk or walkway bordering such premises not later than 1000 hours on the day following the snowfall, on every day except a holiday as defined in the *Interpretation Act*, R.S.B.C. 1996, c. 238, as amended.

I note that while the above By-Law does not strictly apply in this case, since the Tenant fell on the rental property rather than on a sidewalk or walkway bordering the rental property, the By-Law may inform the interpretation of the Landlord's obligations under section 32(1) of the Act, in terms of the timelines for the Landlord to remove snow and ice from the driveway.

Based on the Tenant's evidence that the snow had started in the night and that he fell at around 7:45 am, I am not satisfied that the Landlord was required, under section 32(1) of the Act, to remove snow from the driveway in the morning before the time that the Tenant fell. Furthermore, I accept the Landlord's testimony that he and his son shovelled and salted the driveway regularly. I find the photographs submitted by the Tenant to be consistent with the Landlord's testimony.

Based on the foregoing, I find there is insufficient evidence for me to conclude on a balance of probabilities that the Landlord had breached section 32(1) of the Act.

I find the Tenant has not met his onus of proving that the Landlord had failed to comply with the Act, the Residential Tenancy Regulation, or the parties' tenancy agreement, which is the first step required for seeking compensation under sections 7 and 67 of the Act.

In other words, I find the Tenant has not provided sufficient evidence to demonstrate why the Landlord should be found at fault and held responsible for the Tenant's losses, when it is equally likely that such losses may have resulted from an accident that occurred through no fault of either party.

Accordingly, I dismiss the Tenant's claim for compensation under sections 7 and 67 of the Act, without leave to re-apply.

2. Is the Tenant entitled to recover the filing fee?

The Tenant has not been successful in this application. As such, I decline to order reimbursement of the Tenant's filing fee under section 72 of the Act.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

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 13, 2022

Residential Tenancy Branch