



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, DRI, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant September 09, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 26, 2022 (the “Notice”)
- For compensation for monetary loss or other money owed
- To dispute a rent increase that is above the amount allowed by law
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

The parties agreed the Tenant moved out of the rental unit October 31, 2022. I explained to the Tenant that some of their claims are no longer relevant given they have moved out of the rental unit. The Tenant wanted to proceed with their requests for compensation and the filing fee. I consider the remaining claims to be withdrawn.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence at the outset of the hearing, and no issues arose. During the hearing, the Landlord said they did not receive a quote relied on by the Tenant. I have not gone into this issue further given my decision below.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

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

Background and Evidence

The Tenant sought \$5,251.00 for damage to their motorcycle and forge.

There is no issue that there was a verbal tenancy agreement between the parties.

The Tenant testified as follows. In 2021, the Landlord got peacocks and let them run around free without caging them. The peacocks roosted in the carport of the rental unit. The peacocks also roosted on the Tenant's motorcycle and scratched it. The peacocks knocked an object onto the motorcycle which dented and chipped the rear fender. Further, the peacocks knocked the Tenant's forge on the ground which damaged it such that it could not be used, and the Tenant had to purchase a new one. The Landlord also had a raven that was destructive and pulled the fuel gauge out of the motorcycle and pecked the hand grips on the motorcycle.

The Tenant relied on photos in evidence to prove the peacocks caused the damage claimed. The Tenant submitted that the photos show the motorcycle with feathers and peacock feces on it which shows it was the peacocks who scratched the motorcycle.

The Landlord testified as follows. They did get peacocks in 2021. The rental unit is in a rural area where all types of animals run rampant around and through the property. The peacocks were allowed to roam free. The Tenant said they were not bothered by the peacocks. The Tenant made no effort to protect their property, not just against the peacocks but other animals as well. They did rehabilitate a raven which then stuck around the rental unit for two to three months. The Tenant liked having the raven around which is shown by the photos the Tenant took of the raven on the Tenant's motorcycle. The damage to the motorcycle is clearly wear and tear, the raven did not cause the damage. The Tenant has never provided the Landlord with evidence that the

peacocks knocked their forge over. The Landlord submitted photos showing the Tenant's carport which a bear had entered and trashed. The damage claimed could have been caused by the bear.

In reply, the Tenant testified that they did try to cover their motorcycle with a bedsheet and that they did not have the money to buy a \$200.00 cover for their motorcycle. The Tenant testified that the damage claimed occurred in December when bears are hibernating. The Tenant submitted that the damage shown in their photos could not have been caused by a bear because the scratches are from small claws.

I have reviewed the documentary evidence submitted and will refer to it below as necessary.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

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.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I decline to award the Tenant compensation for the damage claimed because I am not satisfied based on the evidence provided that the Landlord breached the *Act*, *Residential Tenancy Regulation* (the “*Regulations*”) or tenancy agreement and am not satisfied the Tenant mitigated their loss in relation to the damage claimed.

It is unclear how the Landlord having free roaming peacocks or rehabilitating a raven such that it hangs around the rental unit and property are breaches of the *Act*, *Regulations* or tenancy agreement nor did the Tenant explain this despite being advised of the four-part test set out above.

I am not satisfied the peacocks damaged the Tenant’s forge because the Tenant has not submitted compelling evidence to prove this. The Tenant’s carport is open such that any birds, animals or persons could enter it and cause damage. In the absence of further evidence, such as a photo or video of the peacocks knocking over the forge, I am not satisfied they did. Further, the Tenant could have mitigated their loss by not leaving valuable items in a carport that is open such that any birds, animals and persons can enter as they wish.

In relation to the motorcycle, I do not find the Tenant has provided compelling evidence that the peacocks or raven caused the damage claimed. The Tenant testified that they drove their motorcycle at the relevant time. The Tenant’s photos show the Tenant left their motorcycle out in the open uncovered such that it was exposed to the elements as well as all types of birds, animals and people. The damage shown in the photos submitted is the type of damage one would expect to see on a motorcycle that is driven and left in areas exposed to the elements as well as all types of birds, animals and people. To find that the damage shown in the photos was caused by the peacocks or raven, I would expect to see a photo or video of the peacocks or raven actually causing the damage. The Tenant has submitted numerous photos of the peacocks and raven, as well as videos of the peacocks; however, none show the peacocks or raven causing damage to the motorcycle.

Further, it is reasonable to expect the Tenant to have covered their motorcycle with a proper cover if they wished it to remain scratch-free despite leaving it exposed to the elements as well as birds, animals and people. In the absence of the Tenant taking this reasonable step, I am not satisfied the Tenant is now entitled to compensation for the damage claimed.

Given the Tenant has not been successful in the Application, I decline to award the Tenant reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

The 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 *Act*.

Dated: January 27, 2023

Residential Tenancy Branch