



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUPER SILVER HOLDINGS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, OLC, PSF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act*, (the “Act”), for a Monetary Order for damage or compensation under the *Act*, for an Order for the Landlord to comply with the Act or tenancy agreement and for an Order for the Landlord to provide a service or facility required under the tenancy agreement. The matter was set for a conference call.

Both the Landlord and two property managers’ (the “Landlord”), as well as the Tenant and his Advocate (the “Tenant”), attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter

At the outset of the hearing, the Tenant testified that the Landlord had installed the wheelchair ramp he was requesting through these proceedings and that he wished to amend his claim.

The Tenant stated that he wanted to remove his request for an Order for the Landlord to comply with the Act or the tenancy agreement and for an Order for the Landlord to provide a service or facility required by the tenancy agreement, as the requested

service has now been provided. The Tenant also requested that his monetary claim is reduced to \$140.00; comprised of \$50.00 for the recovery of a fee to secure a doctor's notes and \$90.00 in compensation due to the Landlord's breach of the *Act*.

The Landlord expressed no objection to the Tenant's requested amendments to this application.

As the Tenant's request for amendment is to remove two of his claims and reduce his monetary request, I will allow the Tenant's request. I will proceed in this hearing on the Tenant one remaining claim, for a Monetary Order for damages or compensation under the *Act*, in the amount of \$140.00.

Issues to be Decided

- Is the Tenant entitled to a Monetary Order for damages or compensation under the *Act*?

Background and Evidence

The tenancy agreement shows that the tenancy began on April 1, 2013, as a month to month tenancy. Rent in the amount of \$560.00 was to be paid by the first day of each month and at the outset of the tenancy, the Tenant paid a \$280.00 security deposit. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that his medical condition has declined over the past few months and that he now requires the use of a scooter. However, due to the rental building not having a proper wheelchair ramp, that would allow him access to his rental unit on the scooter he has not been able to get the scooter from the local health authority. The Tenant testified that the health authority would not issue him the scooter he needed as he was not able to bring it into the building at night and they would not allow him to leave it outside.

The Tenant testified that he had been trying to get the Landlord to install a proper wheelchair ramp for several years and that he had asked to use a back-service entrance to the building that has a ramp. However, the Tenant testified that the Landlord had required him to pay a \$30.00 a month charge to have use of the back-service ramp. The Tenant testified that he refused to pay that charge.

The Landlord testified that there has always been a removable ramp available to tenants at the main entrance door and that as soon as they received the formal request

from the Tenant for a permanent wheelchair ramp, they took immediate steps to have one installed. The Landlord testified that they now understand that their first attempt to install a wheelchair ramp did not meet building code. The Landlord testified that as soon as they became aware that the ramp they installed did not meet building code, they corrected their mistake and that the wheelchair ramp is now in place and has been built to current building codes.

The Landlord also testified that they have an on-site property manager that had regular opportunity to see the Tenant coming and going during the time of the wheelchair ramp construction. The Landlord testified that the on-site property manager had witnessed the Tenant easily coming and go from the rental property and had often witnessed the Tenant riding his bike and running in and out of the building.

The Tenant testified that he was still able to get in and out of his rental unit during the time that the Landlord was having the wheelchair ramp built. However, his medical condition was exasperated when he had to get on and off of his assisted mode of transportation and walk into the building due to their being no wheelchair ramp. The Tenant is requesting \$90.00 in compensation due to the Landlord's delay in having the wheelchair ramp installed. The Tenant testified that the \$90.00 is comprised of \$30.00 per month from the date of his formal request for the wheelchair ramp, from July, August, and September 2018.

The Tenant is also requesting to recover \$50.00 for a medical note he needed to prove that he was in the hospital during the time of the previously adjourned hearing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

During the hearing, I heard contradictory testimony from both parties regarding facilities provided by the Landlord for wheelchair access to the rental property and the Tenant's ability to get in and out of the rental property.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

After careful review of the Tenant's documentary evidence, I find that the Tenant has not provided sufficient documentary evidence, to satisfy me, that the Tenant was restricted in his access to the rental property. I find there is an absence of physical evidence that would outweigh the contradictory verbal testimony of the parties, in this case. Therefore, I find that the Tenant has not proven sufficient evidence to support his claim for \$90.00 in compensation under the *Act*.

As for the Tenant claim for the recovery of \$50.00 for the doctors note he required to have the previous proceedings adjourned.

Awards for compensation due to damage are provided for under sections 7 and 67 of the *Act*. A party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

"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. 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 that there is no evidence before me to show that the Landlord breached the *Act*. I also find that there is no evidence before me to prove the amount the Tenant paid for the medical note he is claiming. In the absence of evidence to prove a breach of the *Act* by the Landlord, and what the value of the loss the Tenant suffered, I must find that the Tenant has not provided sufficient evidence to substantiate his claim. Therefore, I dismiss the Tenant's claim for the recovery of \$50.00 to obtain a medical note.

Conclusion

I dismiss the Tenant's application, for compensation under the *Act*.

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 15, 2018

Residential Tenancy Branch