



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DRI, LAT, LRE, MNDCT, OLC, PSF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten-Day Notice") pursuant to section 46;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a monetary order for unpaid rent, for damage to the rental unit, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; and,
- an order to the landlord to provide services or facilities required by law pursuant to section 62.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the Act.

At the outset of the hearing the tenant testified that he had already vacated the rental unit. Pursuant to the applicant's request, I dismissed all of the tenant's claims except for the tenant's claim for monetary damages of \$600.00 for a missing personal item.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for the loss of a missing personal item pursuant to section 67?

Background and Evidence

The rental unit is a basement suite. The tenant lived in the rental unit alone and his girlfriend frequently visited. The tenant vacated the rental unit after this application was filed.

While the tenant was still residing in the rental unit, the landlord scheduled multiple tours of the rental unit with prospective new tenants.

The tenant testified that the landlord did not provide notice before entering the rental unit. The tenant testified that after one prospective tenant tour which happened while tenant was at work, a personal electronic item which the tenant had left out was missing. The tenant testified that no one else other than the landlord and the prospective tenants had access to the rental unit. The tenant testified that the personal electronic item was worth \$600.00.

The landlord testified that she provided written notice before the first prospective tenant tour and the tenant told her to just text future showings. The landlord testified that she did text the tenant the day before every prospective tenant showing. In addition, the landlord testified that she accompanied the prospective tenants during every tour and she never left any prospective tenants unattended in the rental unit. The landlord argued that the tenant's claim is not very credible because he did not report the missing item for over a week after the tenant claims it was stolen. In addition, the landlord argues that the tenant's girlfriend also had access to the rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss

and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. 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.

I find that the tenant has not provided sufficient evidence to establish that the landlord caused the loss of the tenant's personal electronic item by violating the *Act*, regulations, or tenancy agreement. I find that the landlord did provide adequate notice before conducting the prospective tenant tours and I find that the landlord appropriately supervised the prospective tenant showings. Further, I find that the tenant has not provided sufficient evidence to establish that the personal electronic item was stolen by the landlord or a prospective tenant. Based on the delay of reporting the item missing and the access that the tenant's girlfriend had to the rental unit, I am not satisfied that the tenant has presented sufficient evidence to prove that the landlord is responsible for this loss.

Accordingly, I dismiss the tenant's claim for monetary damages for the missing personal item.

Conclusion

The application is dismissed in its entirety.

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: July 25, 2019

Residential Tenancy Branch