



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: *MNDC, FF.*

Introduction

This hearing dealt with an application by the tenant, for a monetary order for compensation for the inconvenience endured while the rental unit was being repaired and to recover the fee to file this application, pursuant to Sections 67 and 72 of the *Residential Tenancy Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

Is the tenant entitled to a monetary order for compensation in the amount of \$778.77 which is the tenant's claim for cleaning, rent reimbursement and supplies? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenant testified that the tenancy started on October 01, 2008. On this day, the tenant found workers inside the apartment, painting and repairing the apartment. The tenant stated that the tenant moved in and placed all the tenant's belongings in one room. The tenant found the apartment unclean and contacted the landlord. The landlord authorized the tenant to be reimbursed for two hours of cleaning at \$25.00 per hour. The tenant stated that the landlord had promised that the apartment would be ready for October 01, 2008, but the previous tenant did not move out till September 30, 2008 and hence the apartment was in the process of being painted and repaired on the first day of the tenancy. The tenant stated that due to the paint fumes, the tenant made alternative arrangements for accommodation for the first night.

The tenant stated that the repairs were completed by October 06, 2008 and new flooring was installed over three days ending on October 23, 2008. The tenant is claiming \$606.23 in rent reimbursement for the inconvenience endured during the renovation. The tenant is also claiming \$150.00 for time spent cleaning the apartment, \$10.04 for a latch and \$ 12.50 for labour costs to install it.

The landlord testified that every effort was made to finish the work in a timely manner and that the landlord replaced items instead of fixing them at a huge cost to the landlord. The landlord submitted into evidence, receipts for costs incurred to renovate the bathroom, install new electrical wiring, cleaning, new appliances, re key locks, paint the entire apartment, remove previous tenant's garbage, and install new flooring. The landlord stated that the landlord agreed to reimburse the tenant \$10.04 for the latch and \$50.00 for cleaning the apartment, even though the landlord had had the apartment cleaned prior to the repair work. The landlord stated that the building is old and by renovating the entire apartment, the landlord had provided the tenant with more than the tenant had requested by way of improvements to the apartment.

Analysis

It is important for the claimant to know that to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenant did not occupy the apartment on the first night of the tenancy and endured some inconvenience due to the ongoing repairs. I also find that the landlord attempted to conduct the necessary repairs in a timely manner.

Every tenancy agreement contains an implied covenant of quiet enjoyment. The *Residential Tenancy Act* establishes rights to quiet enjoyment which include freedom from unreasonable disturbance. In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises and the length of time over which the situation has existed. In this case, the tenant occupied the apartment everyday except one and was inconvenienced temporarily for a total of approximately seven days.

During the hearing the landlord offered to reimburse the tenant a total of \$150.00. I find that the landlord has made a reasonable offer and I grant the tenant a rebate in the rent for the next month in the amount of \$150.00.

Conclusion

The tenant has been granted \$150.00 in total satisfaction of the tenant's claim of \$778.77 and may deduct **\$150.00** from the rent for the next month. The tenant must bear the cost of filing this application.

Dated January 13, 2009.

Dispute Resolution Officer