



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on April 09, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. A reasonable amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the damage is caused by the direct actions or neglect of the landlord?
- Has the tenant provided sufficient evidence of the actual amount required to compensate her for the claimed loss or to rectify the damage?
- Is the tenant entitled to recover her filing fee?

Background and Evidence

This tenancy started on January 01, 1998 and ended on August 31, 2008. The tenant testifies that on April 2008 the washing machine in the common laundry facilities flooded

and the water seeped under the adjoining wall into the tenants' bedroom. The tenant notified the building manager who inspected the area and extracted the water from tenants' carpet in her bedroom. The landlord also gave the tenant absorbent pads to help soak up and dry the carpet. The tenant testifies that she asked the landlord to remove her bedroom furniture in order to get at any water underneath but was told it was not necessary. The tenant testifies that the machine has flooded at least three times in the years she has been a resident.

The tenant testifies that over the course of the next few months mould grew on the damp carpets and walls and affected her furniture. She states that it was so mouldy that mushrooms grew. The tenant experienced health issues and was advised by her doctor to move from the apartment. Due to the mould and smell emanating from the bedroom the tenant decided to sleep in the living room for the remainder of her tenancy. The tenant did not inform the landlord in writing of the mould issues until after her tenancy ended.

The tenants' evidence shows photographs of the furniture that sustained water damage and of the mould on the carpets and walls. The tenant gave the landlord one months notice to end tenancy on July 30, 23008 due to the mould issue and the effect this would have on her health. The tenant is claiming the costs to repair the damaged furniture and is requesting compensation from the landlord to recover her costs for moving out of the apartment. The tenant is also claiming the return of 50% rent paid during the five months and claiming an amount for aggravated damages.

The landlords' evidence shows that they took steps to rectify the flooding and to clean and dry the tenants' bedroom carpet. A repair order details the work the maintenance man carried out to the washing machine and the tenants carpets. The repair order also details that the tenant was asked to allow the maintenance man to move her night stand to extract any water but she refused as the night stand is attached to the head board and she didn't

want to damage it by trying to move it. The landlord cleaned the carpet area which was accessible, put down some absorbent pads and deodorisers.

The tenancy agreement indicates that a tenant should act prudently and carry sufficient insurance coverage for her personal property.

Analysis

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 S. 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 to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or 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.

The tenant has provided sufficient proof that the damage or loss exists and verification of the actual amount required to compensate her for the loss and to rectify the damage. However, the tenant has not provided sufficient evidence that the damage was caused by the landlords' actions or neglect. The landlord was not able to have prior knowledge that the washing machine would flood and did carry out annual inspections of the machines and

pipes as required pursuant to s.36 of the *Act*. There is inconsistent testimony about moving the bedroom furniture to prevent further water damage to occur.

The landlord has a responsibility to repair and maintain residential property in a condition that is fit for a tenant to live in but is unable to foresee when this type of flooding may happen. I find that the landlord did take reasonable care to maintain the washing machine by inspecting it annually at the landlord also took reasonable care at the time the flooding occurred to rectify the problem. The inconsistent evidence with regard to the moving of the bedroom furniture does not enable me to make a conclusive decision as to who is at fault. However, when the tenant first noticed that the mould was growing and the smell in the bedroom she should have taken steps to ensure the landlord had access to the carpet underneath the furniture and given permission to have this moved. The tenant did not put in writing to the landlord about the damp conditions, the damage being caused to her furniture or the mould in her bedroom. This would have enabled the landlord to take action to comply with the health, safety and housing standards required by law, pursuant to s. 32(1)(a). The landlord does not dispute that the mould exists but by the tenants own admission she did not inform the landlord in a timely manner. I find the tenant did not do everything possible to address the situation and to mitigate the damage or losses that were incurred. The tenant is unable to conclusively prove that the landlord is in breach of their lawful duty. Therefore, the tenants request for compensation for the cost of the repair of her furniture is denied.

The tenant chose to move from the rental apartment and not address the issues with the landlord at the time they occurred. The tenant, by her own admission, had a number of months to remedy the situation by making her requests in writing to the landlord to give them the opportunity to address the mould problems. Therefore, the tenants request for compensation to recover her moving costs is denied.

The tenant is claiming the return of 50% of the rent she paid in the five months she lived at the apartment after the flood. As the tenant is partially responsible for the conditions by not

informing the landlord in writing so the problem could have been addressed early on. Therefore, this section of her claim for compensation is dismissed.

I do not doubt that the tenant incurred physical inconvenience, loss of amenities and mental distress due to the flood damage. However, the tenant did not take sufficient steps to minimize the damage, inconvenience or distress by informing the landlord in writing of her complaints. Therefore, I dismiss this section of the tenants claim for compensation for aggravated damages.

I find that the tenants claim for compensation does not meet all of the components of the above test. The tenant has not submitted sufficient evidence to support her claim of \$3,056.13

Conclusion

The tenant's application is dismissed in its entirety, without leave to reapply. 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: June 19, 2009.

Dispute Resolution Officer