



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, FF & RPP

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$3867.00.

Background and Evidence

The applicant testified that:

- The landlord gave her a two month Notice to End Tenancy for landlord use however after she vacated the landlord advertised and re-rented a rental suite.
- The landlord or workmen working for the landlord removed numerous of the tenant's belongings from her patio and the landlords contractor and friend informed her that they buried them in the backyard as landfill.
- The landlords also failed to provide hot water to the rental unit for the month of September 2009.

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- During the last week of September 2009 water came up the floor drain located in the kitchen of the rental unit and the landlords got a plumber to check it and at that time the floor drain was capped off.
- After the plumber left there was a major flood, with contaminated water overflowing from the toilet and shower drain.
- As a result of the flood she lost \$10,000 worth of her belongings and had to pay \$200.00 for insurance deductible on the claim for damage to her belongings.
- This incident was also very stressful to her and she feels she has suffered substantial pain and suffering and emotional stress.

The applicant is therefore requesting an order as follows:

Double the monthly rent for failing to comply with the reasons given for ending the tenancy	\$800.00
Insurance deductible	\$200.00
Pain and suffering and emotional stress	\$1000.00
Filing fee	\$50.00
Total	\$3867.00

The respondent testified that:

- The tenant was given an eviction notice because she wanted to move her father into the rental unit and to do renovations.
- The landlord's father is living in a portion of the rental unit and after renovations were completed they did rent a portion of the rental unit out to a new tenant.
- The landlord's father could not have moved into the rental unit if the applicant did not vacate.
- At no time did the landlord or any of the landlords workmen take any of the tenant's belongings and bury them in the backyard.

- The only items of the tenants that were ever used by the landlord were two chairs and only because they did not realize that the chairs belonging to the tenant, they thought they belong to the previous owner of the property. The chairs were returned to the tenant.
- When the landlords purchased the property the hot water had been off for two months and they were advised that the hot water system should be properly inspected before it was turned back on again.
- The landlord said the hot water system and gas lines inspected as soon as possible and had the hot water on before the end of September 2009.
- A flood had occurred at the rental unit, first in the kitchen and at the recommendation of the plumber the drain had been capped, and then secondly a larger flood where contaminated water had come up through the toilet bowl and the shower stall.
- There was no way the landlords could have foreseen this flood occurring and they believe that they dealt with the flood and the cleanup from the flood as quickly as possible and within a reasonable timeframe.
- The cleanup from the flood was made difficult by the fact that the tenant had numerous boxes in the way that made it difficult to clean around.

It is the landlord's belief therefore that the tenant does not have a valid claim of any kind against the landlords.

Analysis

It is my decision that the tenant has not established a claim against the landlords.

The landlords gave a Notice to End Tenancy claiming that a family member was going to move into the rental unit, and a family member has moved into a portion of the rental unit. There is no requirement that the full rental unit be used by a family member and as long as a portion of the rental unit is used the landlord has complied with the reasons given for ending the tenancy.

It is my decision that the tenant has not met the burden of proving that the landlord or any of the landlord's workmen removed any of her belongings from her patio. It is basically just the tenant's word against that of the landlord and the landlord's contractor. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

It is also my decision that the respondent is not liable for the loss of hot water. By the applicants own admission the hot water had been off for a full two months before the landlords purchased this property and it is my finding that it is reasonable that the landlords took time to ensure that the hot water system was in good working order prior to operating the hot water tank. I also accept the landlords claim that they dealt with the hot water system as soon as possible.

I also deny the claim for the insurance deductible and for pain and suffering that the tenant has claimed as a result of the sewage flood. The tenant has not shown that there was any negligence on the part of the landlords in this matter, and I do not believe that the landlords could have foreseen the sewage flood occurring.

The landlords therefore cannot be held liable for any damages that resulted from this flood, and that is why people carry insurance. Any deductible paid on the insurance claim must be born by the tenant.



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Conclusion

This application is dismissed in full 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: November 02, 2009.

Dispute Resolution Officer