

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on July 31, 2009. The Landlord is deemed to be served the hearing documents on August 5, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*. The Landlord confirmed receipt of the hearing documents.

The Landlord, the Landlord's Agent, the Tenant, and the Tenant's witness appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

Is the Tenant entitled to a Monetary Order under section 67 of the *Residential Tenancy Act*?

Background and Evidence

The month to month tenancy began on May 1, 2009 and ended when the Tenant vacated the rental unit sometime between May 12 and May 14, 2009. The rent was payable on the first of each month in the amount of \$600.00 and there was no security deposit requested or paid.

The Tenant testified that on May 9, 2009 he returned home and started a load of laundry around 9:00 or 10:00 p.m. When he checked on the laundry he found water pumping up from the drain. The Tenant argued that he knocked on the Landlord's door and when there was no answer he returned to the basement and cleaned up the water. The Tenant stated that he took a shower the next morning, Sunday May 10, 2009, at approximately 7:00 a.m., which caused the water to start backing up again. The Tenant

testified that he went upstairs and knocked on the Landlord's door and she immediately came downstairs to see what the problem was. The Tenant testified that, after seeing the water backing up, the Landlord called the sewer repair company and requested that they attend as soon as possible.

The Tenant stated that the repair company attended to the problem approximately three hours after the Landlord called them. The Tenant argued that on Monday someone attended his rental unit from the Landlord's insurance company and a restoration company came and told the Tenant to discard his possessions as they had been contaminated with sewage.

The Landlord's agent testified that the Landlord acted as soon as she was informed of the issue and the Landlord gave the Tenant \$600.00, the return of his full monthly rent.

The Tenant testified that he moved back into his Mother's place as a result of this flood and he confirmed that the Landlord gave him \$600.00 in two separate payments, the first of \$500.00 and the second of \$100.00.

The Tenant's Witness testified that she attended both floods and assisted her son move his possessions and clean up the mess. The Witness testified that her son was only a Tenant for about three or four days before the floods occurred and that she witnessed the Landlord having a discussion with her son about the Landlord moving the Tenant's possessions out, however the Landlord later changed her mind and refused to pay to move the Tenant's possessions.

The Tenant testified that he did not have insurance on his contents and that he is seeking a Monetary Order of \$5000.00 to cover the cost to replace his damaged possessions and the cost to house him during the restoration.

Analysis

I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Tenant would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by doing whatever is reasonable to minimize the damage or loss

In regards to the Tenant's right to claim damages from the Landlord, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

The evidence and testimony supports that the sewage backed up in the rental unit on May 10, 2009 and that the Landlord did not delay in calling in a repair company to rectify the situation, in accordance with the section 33 of the *Residential Tenancy Act* (Act). On May 12, 2009, two days after the flood and as the result of a verbal discussion between the Landlord and the Tenant, the Landlord paid the Tenant \$600.00; an amount equal to a full month's rent

The Tenant has submitted into evidence a list of items he wishes to claim compensation for, however there are no receipts to prove that the items have been replaced and what the actual replacement cost was. I also note that the Tenant has requested reimbursement for the cost of a hotel to house him during the two day restoration period; however the Tenant did not stay in a hotel and has not submitted a receipt in support of this claim.

Based on the aforementioned I find that the Tenant has failed to prove the test for damage or loss as listed above, and I hereby dismiss the Tenant's claim.

As the Tenant has not been successful with his application, I find that he is not entitled to recover the filing fee from the Landlord.

Conclusion

I HEREBY DISMISS the Tenant's claim, 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 20, 2009.

Dispute Resolution Officer