

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and her advocate and the landlord's agent.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss, pursuant to sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant has submitted the following documents into evidence:

- A summary of events of the dispute;
- A copy of a letter from the tenant to the landlord dated October 19, 2009 requesting a "break on my rent for the month of October";
- A copy of a letter from the tenant to the landlord dated November 13, 2009 requesting an update on her request for reduced rent;
- A written response to the landlord's evidence;
- A copy of a letter from a witness for the tenant dated April 6, 2010 regarding the events of the dispute;
- A copy of a letter from a witness for the tenant dated February 27, 2010 regarding the events of the dispute; and
- Photographs of the notice to residents from the resident manager on how to contact the resident manager for emergency and non-emergency situations and the door where requests from tenants are to be placed.

The landlord has submitted the following documents:

- A letter dated February 16, 2010 from the Senior Property Manager indicating he has not received any correspondence from the tenant regarding this matter; and
- A written statement summarizing the events of the dispute from the resident manager.

The tenant testified that she had informed the landlord of flooding in her rental unit by leaving a request for maintenance in the usual place on the residential property that tenants use but that prior to the landlord seeing her request she ran into him on the

morning of October 8, 2009 and explained the situation. She further testified that the landlord stated he would call a plumber.

The tenant stated that the landlord did not attempt to clear the drain on October 8, 2009 and that she had to call him back later that day and was told he had not heard from the plumber. The tenant testified that she contacted the landlord again on October 9, 2009 but that she was told a plumber would not be available until Tuesday, after the long weekend.

According to the tenant's testimony the landlord came to her rental unit on the afternoon of October 10, 2009 and worked on the drain. But that the problems continued on October 11 and 12, 2009 and that a plumber came on October 13, 2009 and fixed the problem.

The resident manager was not available for the hearing but had submitted a written statement indicating that he had attempted to fix the drain on October 8, 9, and 10, 2009. His written statement indicates that on October 8, 2009 he used a combination of chemical drain cleaner, hot water and plunging and this seemed to alleviate the problems.

The tenant contacted him the next day to state the drains were again plugged. The manager's statement goes on to say that on both October 9 and 10, 2009 he called a plumber and arranged for them to come later in the day; he attempted to fix the drains again and when he had the water flowing he cancelled the plumber believing he had fixed the problems.

His statement goes on to say that he did not hear from the tenant again until October 13, 2009 at which time he called a plumber who came and fully corrected the problem.

The tenant testified that throughout the time period of the onset of the flooding and the final corrective action by the plumber, she had done everything she could to prevent the flooding from damaging her personal belongings and the rental unit as well.

Analysis

As per the Residential Tenancy Policy Guideline 16, when tenants and landlords enter into tenancy agreements each party has certain obligations to uphold, regardless of the circumstances. For example, a tenant is expected to pay rent and if the tenant fails to pay rent the landlord is entitled to damages.

In this instance, the landlord is expected to provide the premises as agreed to, that is with a fully functioning kitchen without a sink clogged to the point that it is causing flooding in the rental unit. If the tenant is deprived of the use of all or part of the premises through no fault of their own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord.

While I find it reasonable that a resident manager might make attempts to repair a clogged drain, even on a couple of occasions, prior to bringing in a designated professional and I don't find any negligence on the part of the landlord, I do find that the tenant suffered a loss as a result of the flooding over several days in her rental unit.

In light of the landlord's commitment to resolve the plumbing problems quickly, I find the tenant's request for a full month's rent in the amount of \$736.00 for compensation to be unreasonable and find that a proportional amount based on that rent to be more within reason.

A per diem based on the monthly rent for October 2009 would be \$24.53; however, as the tenant did not lose use of the full rental unit, I find that $\frac{1}{2}$ of that per diem amount to be reasonable compensation for a period of 5 days or a total compensation of \$61.35.

Conclusion

Based on the above, I order the tenant to reduce her next rent due by \$61.35, in accordance with Section 72(2)(a) of the *Act*.

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: April 23, 2010.

Dispute Resolution Officer