

## **DECISION**

Dispute Codes      MNDC, O, FF

### 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 the landlord's agent.

At the outset of the hearing, I clarified with the applicant what she had meant by other and we determined that her issues were dealt with under money owed or compensation for damage or loss. As such, the tenant's application was amended to exclude "other".

### 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 and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenancy began in May 2009 as a month to month tenancy for a current monthly rent of \$870.00 due on the 1<sup>st</sup> of the month, a security deposit of \$400.00 was paid and subsequently returned to the tenant when the tenant moved out of the rental unit.

The tenant submitted the following documents:

- A letter from her supervisor attesting to her absence from work on November 26 and 27, 2009 indicating she had personal matters relating accommodation to attend to; and
- A receipt for service of documents through registered mail.

In addition the tenant stated she had submitted a receipt for renting a vehicle to move her belongings, however this receipt was not on file with the application. The landlord confirmed he had received a copy.

The landlord submitted the following documents:

- A summary of events including the landlord's offer to store the tenant's belongings during restoration and a free month's rent and confirmation that the landlord returned the tenant's security deposit in full;

- A copy of a letter from the landlord's insurance broker outlining how the events as they observed them;
- A copy of a receipt for the replacement of the sump pump; and
- 4 photographs showing wet carpets, no standing water is visible.

The tenant testified that on the morning of November 26, 2009 she awoke to water on the floor of her rental unit, particularly the living room and the closet of the computer room and near her entrance door.

She further stated that she informed the landlord of the situation and despite the landlord's offer for a month free rent and storage of her belongings during the restoration, she decided she needed to move out. She rented a truck at 12:42 and moved her belongings out that day.

The landlord's agent testified that the tenancy had been good up to this point and even though the tenant did not provide a month notice to end the tenancy they gave her full security deposit to her that day.

### Analysis

In order to be successful in a claim for damages an applicant must show that a loss or damage exists; the loss or damage results from a violation of the *Act*; the value of the loss and the steps taken to mitigate the loss.

Section 33 of the *Act* requires a landlord to make emergency repairs that are urgent and necessary for the health or safety of anyone or for the preservation or use of residential property. I find the landlord met this obligation by responding immediately to the tenant's notification of the wet carpet and has therefore not breached the *Act*.

I find the landlord went above and beyond their obligations by offering a full month rent and storage costs to the tenant and by failing to accept this offer the tenant failed to mitigate any losses she may have suffered as is required under Section 7 of the *Act*.

And finally, Section 45 of the *Act* allows a tenant to end a month to month tenancy if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure. The tenant gave the landlord absolutely no time to restore the rental unit.

### Conclusion

Based on the above, I dismiss the tenant's application 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: April 28, 2010.

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Dispute Resolution Officer