

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the tenants seeking monetary compensation for damages arising from a water intrusion into the rental unit. The tenants seek reimbursement for damaged furnishings and loss of use of the living room during the period in which it was under repair and recovery of the filing fee for this proceeding.

Issues to be Decided

This application requires a decision on whether the tenants are entitled to compensation for the claims submitted.

Background and Evidence

The tenancy began on May 1, 2009. Rent is \$1600 per month and the landlord holds a security deposit of \$800.

During the hearing, the tenant gave evidence that on or about November 30, 2009, it became apparent that water was leaking on to the living room floor. The matter was reported to the landlord and work began on December 14th and continued until December 22nd 2009 during which time the tenants had little or no use of the living room.

The tenants seek reimbursement of the fully daily rent for the nine days during which they did not have full use of the living room, $\$51.61 \times 9 = \464.49 .

In addition, the legs to the couch and a walnut veneer cube table were damaged and the tenant submitted repair/replacement estimates of \$45.50 for the legs and \$900 to \$1,500 for the table.

While neither party submitted a copy of the rental agreement, the landlord gave evidence that it contains a clause requiring the tenants to obtain contents insurance. The tenant was uncertain as to what was covered in her policy.

Analysis

Section 7 of the *Act* provides that if either party's failure to comply with the legislation or rental agreement results in damage or loss to the other, the non-compliant party must compensate the other for the loss. The same section imposes a duty on the party experiencing the loss to do whatever is reasonable to minimize the loss.

While the tenant felt that the two week delay between reporting of the leak and the commencement of work was unnecessarily long, I accept the evidence of the landlord that workers were assigned as expeditiously as possible and part of the delay resulted from the difficulty of locating the source of the intrusion.

With respect to the tenants' claim for damage to the furnishings, I find that the loss is not the result of a failure to comply or negligence on the part of the landlord. As the tenants either did not obtain or make claim on their contents insurance, they have assumed the risk and/or have not acted to minimize the loss. Therefore, this part of the claim is dismissed.

However, I do find that the tenants did not have full use of the living room for nine days and that they are entitled to reimbursement for that loss. As the tenants did have full use of the remainder of the rental unit for the period, I find that they should be reimbursed for one-quarter of the rent paid for the nine days, or $\$464.49 / 4 = \116.12 .

In addition, I find that the tenants should recover the \$50 filing fee for this proceeding from the landlord for a total award of \$166.12.

Conclusion

I hereby authorize and order that the tenants may recover the amount owed by withholding **\$166.12** from the next rent due following receipt of this decision..

May 27, 2010