



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, 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 landlord and the tenant's advocate. The tenant was, at the time of the hearing, out of the country and did not attend.

Issues(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for money or compensation owed for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 67, and 72 of the *Act*.

Background and Evidence

The tenant contends the landlord held her financially responsible for damage to the rental unit that was through no fault of her own and that she paid for the repairs to that damage under the threat of eviction.

The landlord submits that the rental unit had suffered damage as a direct result of the tenant's practices of never opening windows, using the bathroom fan and always hanging her wet laundry to dry in the rental unit.

The landlord contends that as a result the rental unit suffered mould damage and the carpeting was soaking wet. The landlord also asserts that the tenant knew about this damage as early as January 2010 and failed to advise the landlord. The landlord states she first noticed mould by seeing it in the window of one of the rooms from the outside.

The tenant's advocate states that the tenant did nothing different than her usual practice in the 18 months since the tenant had been in Canada and that this had not resulted in any problems in the past. The advocate states that most of the damage was in a room that the tenant seldom used and behind the couch on the walls.

The landlord submitted an email from the general manager from a local flood restoration company who states: "we are able to confirm that the damage was due to elevated interior humidity" and that they were not able to determine any other cause for the damage.

The tenant submits through her advocate that there could have been any number of types of problems such as foundation problems or the fact that there had been a dry fall followed by an enormous rain storm. The tenant provided no expert submissions or testimony.

Analysis

For an applicant to be successful in a claim of loss or damage the applicant must provide sufficient evidence to prove the following four part test:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Both parties agree the tenant paid the landlord for the repairs, as such I find the tenant suffered a financial loss. While the tenant contends that she felt the landlord was forcing her to pay the cost to repair the damage under the threat of eviction the tenant provided no evidence to support this claim.

The onus in this proceeding is on the tenant to show that the loss resulted from a violation of the *Act*, regulation or tenancy agreement and while the landlord has not provided conclusive evidence to show the damage was caused by the tenant, the evidence that was submitted *implies* the damage was caused by the tenant's actions and the tenant has failed to provide any evidence to support her claim that the damage was caused as a result of the landlord breaching the *Act*, regulation or tenancy agreement.

Even if I were to find the damage was caused by the landlord's actions I find the tenant failed to mitigate any damage or loss suffered by the tenant by failing to report the damage to the landlord as soon as it was discovered by the tenant.

Conclusion

For the reasons noted 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: September 07, 2010.

Dispute Resolution Officer