



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?

Background and Evidence

This tenancy started on August 1, 2004. Rent is \$1,094.00 per month. On or about August 7, 2010, the Tenant's kitchen sink backed up and flooded part of the rental unit. The Landlord had a restoration company attend the rental unit on that day and an insurance appraiser took photographs of the damages.

The Tenant claimed that the rental unit was uninhabitable from August 9, 2010 until October 25, 2010 and during that time he resided with a family member but paid them for room and board. The Tenant said cabinets and sections of drywall in the kitchen were removed and all of the appliances were unplugged. The Tenant also said that carpeting in the living room dining room and hallway were removed. The Tenant said the Landlord did not keep him informed about the timing of the repairs so he never knew when the repairs were going to be completed. The Tenant said he returned to the rental unit on October 10, 2010 to find that the carpeting had been replaced but he argued that the rental unit was not clean and in particular, the bedding had absorbed odours. Consequently, the Tenant said he incurred expenses for new bedding and cleaning supplies.

The Tenant said he and his father met with the Landlord's agent on September 30, 2010 and at that time, the Landlord's agent agreed that he could have free rent for August, September and October 2010. The Tenant also sought to be reimbursed for purchasing elements for the stove. The Tenant said approximately 4 days after the flooding, he removed the elements and left them in a box in the kitchen but could not find them when he returned to the rental unit.

The Landlord's agent denied telling the Tenant he could have free rent for October because he said the repairs to the rental unit were substantially completed as of that day and were totally completed by October 4, 2010. The Landlord's agent also denied that the rental unit needed further cleaning once the repairs were done and claimed that everything was new. In particular, the Landlord's agent said the carpeting in the whole rental unit was replaced (ie. even in undamaged areas) so that it would match the carpeting installed in the hallway, living room and dining room. The Landlord's agent also said the kitchen cupboards, flooring and countertops were replaced and the whole rental unit was freshly painted. The Landlord's agent argued that the Tenant did not move out of the rental unit while repairs were being made and claimed that the Tenant was fully compensated for any loss of use of the unit for a 2 month period (ie. August 9, 2010 – October 9, 2010).

The Landlord's agent argued that there was no basis for the Tenant's claim for new bedding and cleaning supplies because the restoration company ensured that the rental unit was thoroughly cleaned, because none of the Tenant's bedrooms were affected by the flooding and because the bedroom doors were left shut at all times. The Landlord's agent also argued that the Tenant should be responsible for replacing the stove elements because he removed them unnecessarily.

Analysis

Section 27(2) of the Act says (in part) that if a landlord terminates or restricts a service or facility, the Landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction. Section 28 of the Act says (in part) that a Tenant is entitled to quiet enjoyment including but not limited to exclusive possession of the rental unit and freedom from unreasonable disturbance.

The Tenant argued that the rental unit was uninhabitable until October 25, 2010 in part due to the need for repairs to be completed and in part because additional cleaning was required after the repairs were done. The Landlord's agent argued that all repairs were completed by October 4, 2010, that no further cleaning was required and that the Tenant has already been fully compensated for his loss of use of the rental unit during the period repairs were made.

In this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that the rental unit was uninhabitable until October 25, 2010 and that further cleaning was required after repairs were made to make it habitable. This means that if the Tenant's evidence is contradicted by the Landlord, the Tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The Landlord provided copies of invoices from the restoration company, the first of which shows they attended on or about August 7, 2010 to extract the water from the

areas of the rental unit affected by the flooding (which did not include any of the bedrooms). On the first report, the restoration company also noted that the elements of the stove were missing and that the Tenant was delaying the drying out process by moving drying equipment into the hallway. A second invoice from the restoration company lists the repairs that were made and that a “final clean” was completed. The invoices do not indicate the date the repairs were completed. I find on a balance of probabilities that the repairs were completed by October 10, 2010 *at the latest*, which is the date Tenant said he attended the rental unit and noticed that the new carpeting had been installed.

I also find that the Tenant has provided insufficient evidence to conclude that the rental unit was uninhabitable until October 25, 2010 because it required additional cleaning. The invoice from the restoration company shows that cleaning was completed after all repairs were made. The evidence of both parties was that the bedrooms were not affected by the flooding. The Tenant provided an invoice for cleaning a hall carpet and a mattress and box spring on October 15, 2010. The invoice says that the mattress and box spring have pre-existing holes and stains and that the reason for the cleaning is “esthetics” rather than for “health” reasons. Based on this evidence, I find that the Tenant has not shown that the additional cleaning was necessary to make the rental unit fit for occupation or that this cleaning was required because of the flooding.

In summary, I find that the Tenant was fully compensated for his loss of use of the rental unit from approximately August 7, 2010 to October 9, 2010 when repairs were made and therefore he is not entitled to be compensated for the balance of October 2010 rent or for expenses for cleaning supplies or new bedding.

I also find that the Landlord is not responsible for compensating the Tenant for replacing stove elements. The invoice of the restoration company shows that the stove elements were missing the day of the flooding occurred and not 4 days later when the Tenant claimed he removed them. As a result, I find that the Tenant is responsible for replacing the missing elements. Consequently, the Tenant's application for compensation and to recover the filing fee for this proceeding is dismissed without leave to reapply.

Conclusion

The Tenant's application is dismissed 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: February 28, 2011.

Residential Tenancy Branch