



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

MNDC

Introduction

This hearing was convened in response to an application filed by the tenant seeking money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties attended the hearing and were each given opportunity to discuss their dispute, present relevant evidence, make relevant submissions, and provide sworn testimony. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be determined

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed evidence in this matter is that the tenancy started June 01, 2010. On August 31, 2010 a “rainstorm” occurrence backed up / blocked a drain on the roof of the rental unit and caused a quantum of water to enter the tenant’s unit causing damage to the interior (“water ingress”). It has not been conclusively established what caused the blockage, although it occurred in an area not authorized for access or apparently impacted or affected by the surrounding factors, although the tenant alleges a beverage can container caused a blockage. The tenant was consequently displaced from the unit while it underwent remediation. As a result, the tenant incurred living expenses of a hotel and for meals of over \$4700.

The landlord testified that they went through all the insurance options available to them and the tenant’s living expenses were not covered by the landlord’s insurance. As

goodwill, the landlord reimbursed the tenant \$2000 toward their living expense costs – without acknowledging liability or negligence. The landlord provided the Tenancy Agreement – referring item 22 of the agreement. The tenant and landlord agree the tenant was advised in that agreement, at the outset of the tenancy, that they should purchase tenant's insurance but they did not - which the landlord claims would have covered the tenant's loss had they purchased it. Regardless, the tenant is claiming the balance of their living expenses from the landlord after deducting the landlord's \$2000.

The tenant is, effectively, alleging *strict liability* on the part of the landlord, resulting in their claim for the balance in the amount of \$2731.20.

The tenant claims that if they had purchased tenant's insurance that it would not have reimbursed their living expense costs due to the water ingress. The landlord argues to the contrary, and provided a letter from an insurance agency that effectively states that the landlord's insurance is partially responsible for the landlord's property, and that tenant's insurance covers the tenant for their contents and *living expenses*.

Analysis

In this matter the burden of proving claims of loss and damage rests on the claimant (tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the claimant (tenant) take reasonable steps to mitigate or minimize the loss?

Section 7 of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The tenant bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred. I find the tenant has not shown that the landlord was negligent, or that the landlord's negligence and non-compliance with the *Act* resulted in the tenant's loss. On the balance of probabilities I find the tenant has not met the test for damage and loss and as a result **I dismiss** the tenant's application 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*.