



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This decision deals with applications filed by both the tenant and the landlord. The tenant had applied for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. The landlord applied for monetary compensation for damage to the rental unit, unpaid rent, and damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Has the tenant established an entitlement to compensation from the landlord for a flood that occurred in the rental unit?
2. Has the landlord established an entitlement to compensation for damage to the unit, unpaid rent, or other damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy commenced October 1, 2010 and the tenant was required to pay rent of \$675.00 on the 1st of every month under a month-to-month verbal tenancy agreement. The tenant did not pay rent when due on November 1, 2010. On November 3, 2010 the tenant discovered that water flooded a portion of the rental unit in the late evening hours. The source of the flood water was attributable to the city's sewer lines. On November 4, 2010 the tenant began staying at a friend's house although her possessions remained in the rental unit and the landlord called her insurance carrier and a restoration company. The landlord refunded the security deposit to the tenant and the tenant returned the keys to the landlord in the days that followed.

The parties were in dispute as to whether the rental unit was suitable for occupation after the flood and the damage caused to the tenant's possessions. The tenant did not carry tenant's insurance.

In making the tenant's application the tenant is seeking compensation for damaged property and the cost of a storage locker in the total amount of \$1,390.00.

In making the landlord's application the landlord is seeking compensation for unpaid rent for one and a half months, or \$1,012.00 plus a truck rental for disposal of the tenant's abandoned possessions in the amount of \$90.00 and clean up time in the amount of \$90.00. In the landlord's details of dispute the landlord indicates that the rental unit was still not rented at the time of making the application (March 2011).

The only documentary evidence provided for this proceeding was photographs taken by both parties.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline 16 provides for claims in damages. The guideline provides, in part,

Claims in Tort

A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

[my emphasis added]

Where a rental unit is damaged by an unforeseen event, such as fire or flooding, it is upon the landlord to repair the rental unit and residential property. Tenant's insurance generally covers damages or loss a tenant may incur, such as loss of personal property and alternative accommodation or storage, as a result of an unforeseen event. Damage to a tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the landlord has been negligent in the duty owed to the tenant.

In light of the above, it is upon the tenant to show that the water infiltration in the rental unit was a result of the landlord's negligence or that the landlord was negligent in responding to the situation. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party. In this case the parties agreed that the landlord was not negligent in causing the flood and having heard the landlord brought in a restoration company on November 4, 2010 I find the landlord acted sufficiently and reasonably to the flood. Accordingly, I do not find evidence of negligence on part of the landlord and the tenant does not have an entitlement to compensation from the landlord for her damaged belongings or storage costs.

As I informed the tenant during the hearing, had the tenant paid rent for November 2010 I would likely have found her entitled to recover some of the rent she paid for loss of use and enjoyment of the rental unit. However, the tenant did not pay rent for the period of time she lost use and enjoyment of the rental unit.

With respect to the landlord's claims for unpaid rent, I find the landlord failed to provide sufficient evidence as to whether she made an insurance claim for loss of rent as a result of the flood and if so, the amount she received. Nor did the landlord provide evidence as to when she commenced efforts to re-rent the unit. As part four of the criteria outlined above, a party must take reasonable measures to minimize their loss. I find it reasonable that the landlord would have claimed for loss of rent through her insurance and started advertising efforts once it was clear the tenancy had ended. Accordingly, I dismiss the landlord's claims for unpaid rent for November 3, 2010 onwards. As the tenant has use and occupation of the rental unit before the flood for which she did not pay rent I find the tenant owes the landlord rent for November 1 and 2, 2010 in the amount of \$45.00 [\$675.00 x 2/30 days].

With respect to the landlord's claims for truck rental I find the amount claimed was not supported by a receipt or other evidence and I deny this portion of the landlord's claim.

From the photographs provided to me and upon hearing from the parties I am satisfied the tenant abandoned furniture at the residential property and the landlord incurred a loss of her own time to deal with the tenant's abandoned property. I find the landlord's claim for her own time in the amount of \$90.00 to be reasonable given the photographic evidence before me.

In light of the above, I award the landlord \$135.00 in compensation plus a portion of the filing fee she paid for this application for a total award of \$150.00. The landlord is provided a Monetary Order in the amount of \$150.00 to serve upon the tenant and enforce in Provincial Court (Small Claims) as necessary.

Conclusion

The tenant's application was dismissed in its entirety. The landlord was partially successful and has been provided a Monetary Order in the amount of \$150.00 to serve upon the tenant.

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 29, 2011.

Residential Tenancy Branch