



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant seeking a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”) and to recover the filing fee from the Landlord.

The parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form, and to cross examine each other.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to monetary compensation under section 67 of the *Residential Tenancy Act* and to recover the filing fee?

Background and Evidence

This tenancy began on December 16, 2006, and ended on January 31, 2011, monthly rent was \$800.00 and there was no security deposit paid by the Tenant.

These parties have previously been in dispute resolution, with the Landlord applying for an order of possession and a monetary order. As a result, the Landlord received a monetary order for unpaid rent for two months, in the amount of \$1,650.00, which included a \$50.00 filing fee.

The Tenant is seeking a monetary order for \$1,650.00 for the following:

1. \$1,600.00 for loss of income from September 15-December 30, 2010, loss of rugs, and for medical reasons due to loss of sleep, anxiety and stress.

2. The filing fee--\$50.00

The Tenant's relevant evidence included:

1. A Return to Work and Late Arrivals form, dated December 1, 2010, noting one day off work, mentioning basement flooding as the reason for absence;
2. A short term disability claim form, signed January 5, 2011, which stated the day the Tenant became unable to work was January 4, 2011; and
3. An attending physician's form citing sinusitis as a primary diagnosis for the missed days.

In addition to the evidence, the Tenant testified that for several months her rental unit leaked, causing her to miss work to mop up the water and causing her health problems. The Tenant submitted that this created a stressful situation for her and that she missed a lot of sleep.

The Tenant submitted that the repairs promised her were never completed and she lost income due to missing days from work.

The Tenant submitted that the basement flooding caused her to lose some area rugs.

The Tenant stated that she had sinusitis, "probably" due to the moisture and mould.

Upon query, the Tenant stated that she valued the rugs from an online internet search, but did not provide any evidence of the lost rugs.

The Landlord's relevant evidence included:

1. A copy of the February 3, 2011, Decision granting her a monetary order for unpaid rent in the amount \$1,650.00, which included a \$50.00 filing fee; and
2. A handwritten statement in support of her defence of the Tenant's Application, alleging that the Tenant filed for dispute resolution as reprisal for the Decision of February 3, 2011, and in the same amount.

The Landlord submitted that the parties worked together and had been friends for years, until the Tenant began spreading rumours about her at work, which in turn has caused the Landlord stress and anxiety.

The Landlord agreed that there was leaking in the basement due to repairs being made by the owner of the building, but nothing that required staying off work or losing any personal possessions, such as the area rugs.

The Landlord submitted that the Tenant has suffered from anxiety and sinusitis problems for years, not due to the issues of the tenancy.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. In this case the Tenant bears the burden to prove a loss, which includes the following four different elements:

First proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find the Tenant submitted insufficient evidence to prove steps one, two or three, that there was a loss, or that any loss occurred due to the actions of the Landlord.

In reaching this conclusion, I was persuaded by the lack of proof that the Tenant missed any significant number of days from work, rather the documents indicate one missed day due to basement flooding and another unspecified number of days, estimated by the doctor to be from January 4-9, 2011, due to sinusitis. Neither document substantiates the missed days were the responsibility of the Landlord or that the Tenant suffered a loss of income due to the missed days. I find no evidence has been submitted that the Tenant suffered from stress, anxiety or loss of sleep.

As to the loss of rugs, the Tenant supplied no evidence that she lost the use of the rugs or what amount would compensate her for the lost rugs.

I accept the Landlord's position that the Tenant filed this dispute resolution, the claim for which is for the same amount as the monetary order against the Tenant held by the Landlord, in retaliation for the Landlord's dispute resolution.

I find the Tenant submitted insufficient evidence to support her claim and I dismiss her application, without leave to reapply.

As I have dismissed the Tenant's claim, I dismiss her request for the filing fee.

Conclusion

The Tenant's Application is dismissed.

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: June 06, 2011.

Residential Tenancy Branch