

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord agreed that the tenants handed him a copy of their dispute resolution hearing package on March 2, 2011. I am satisfied that the tenants served this package to the landlord in accordance with the *Act*.

Issues(s) to be Decided

Are the tenants entitled to a monetary award for loss arising out of this tenancy? Are the tenants entitled to recover their filing fee for this application from the landlord?

Background and Evidence

This fixed term tenancy commencing on July 1, 2010 was scheduled to end on June 30, 2011. Monthly rent was set at \$800.00 payable in advance on the first of each month. The landlord does not retain any of the tenants' \$400.00 security deposit paid on July 1, 2010. The tenants vacated the premises by the end of February 2011.

The tenants applied for a monetary award of \$800.00. Included in their application was a request to compensate them for the landlord's alleged failure to repair or replace their stove during three months of their tenancy and for mould in three locations in their former rental unit.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, a Dispute Resolution Officer may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

During the course of the hearing, the male tenant testified that the mould issue was of secondary importance to the tenants as it was only in a couple of locations and did not cause any financial loss to them. He said that he could not offer an estimate of any financial loss that the tenants incurred as a result of this issue. The landlord testified that he was never told about the mould issue by the tenants. He said that had he known that there was mould in their rental unit he could have added to existing work that he commissioned to resolve mould issues in two other suites where he had workers remove and repair damage caused by mould.

On the basis of the evidence presented by the parties, I find that the tenants are not entitled to a monetary award for mould in the rental unit. I am not satisfied that the tenants provided adequate notice to the landlord of this problem during their tenancy or that the tenants are seeking a financial award for losses they incurred resulting from mould during their tenancy.

In considering the tenants' application for a monetary award for loss of their stove during parts of their tenancy, I find that there is conflicting evidence regarding the timing and circumstances surrounding this issue.

The tenants testified that they were without a functioning stove for a three month period at the end of their tenancy. The tenants also said that they were without use of their stove for another period during their tenancy. They said that this presented problems for them as they had to eat out of the house frequently without a functioning stove.

The landlord testified that early in this tenancy he called an appliance store which sent a person to repair the tenants' stove within two or three days of being notified that it was malfunctioning. He said that the tenants did not complain again about their stove until after he initiated action to try to evict the tenants for bringing a dog to live with them. The landlord testified that this occurred about January 10, 2011. When he explained that he would need to discuss this with the owner of the property who was out of the country attending a funeral, he claimed that the tenants told him that they had a range of other cooking options and that they did not need immediate action on their request. The landlord said that he had located a different stove for their rental unit by January 15, 2011. He said he had this stove sent to him from Victoria and had it available in his shop as of January 16, 2011. He gave oral testimony that the female tenant refused to allow him access to the rental unit for the two hours he would need to install this stove. He said that by that time the tenants were starting their preparations for moving and that they did not give him the necessary access he needed to replace the stove. He said that he installed the new stove on March 1, 2011 after the tenants vacated the premises.

Based on the evidence presented and the testimony given by the parties, I am not convinced that the landlord was responsible for failing to provide the tenants with a stove when they notified him that the existing stove was malfunctioning. I find the landlord's evidence regarding the efforts he took to replace the stove was credible and provided undisputed details regarding this issue. The tenants' evidence was not as credible as that given by the landlord regarding the dates involved or the steps they took to alert the landlord to this problem. They provided no evidence that they submitted anything in writing to the landlord regarding their concerns about their stove. I accept that the landlord had a stove available for the rental unit by mid-January 2011 but was unable to install it without the tenants' permission.

I find that the tenants have not satisfied the burden of proof required by section 67 of the *Act* to demonstrate that the landlord contravened the terms of their tenancy agreement or the *Act*. Similarly, the tenants have not shown how they incurred financial losses resulting from the landlord's failure to attend to their complaints about loss of a functioning stove in their rental unit. I dismiss the tenants' application for a monetary award. As the tenants have been unsuccessful in their application, I make no order regarding the recovery of their filing fee from the landlord.

Conclusion

I dismiss the tenants' application 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*.