



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenant for compensation for loss of damage under the Act, regulations or tenancy agreement.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on September 8, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there a loss or damages and if so how much?
2. Is the Tenant entitled to compensation for the loss or damages and if so how much?

Background and Evidence

This tenancy started on December 5, 2002 as a fixed term tenancy with an expiry date of December 31, 2003 and then it renewed as a month to month tenancy. Rent is \$1,142.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$490.00 in December 2002.

The Tenant said on July 26, 2011 there was a water leak in his rental unit in the middle of the night. The Tenant said there was water in the bathroom, bedroom kitchen and living room. The Tenant continued to say he advised the acting building Manager because the building Manager was on holidays at that time. The Tenant continued to say he called the fire department who came and assisted by turning the water off and pumping some of the water out of the rental unit. The Tenant said by approximately 5:00 a.m. a plumber had come to the building and had fixed the water leak. The Landlord said the acting manager had phoned the on call plumber and he came and fixed the problem within hours of the problem being reported.

The Tenant continued to say that he is claiming compensation for 10 days at \$200.00 which is what it would have cost him to live in alternative accommodations while his

rental unit was being cleaned and dried out. The Tenant said it was very noisy and he lost the use of his kitchen for a number of days and his cable for internet and TV for 1 day. He said he did not have the full use of his rental unit from July 26, 2011 to August 2, 2011 while the unit was being dried and worked on. As well the Tenant said he is claiming for additional hydro charges of \$15.00 for the extra electricity that the drying fans used and \$265.00 for additional discomfort and for the costs to make this application. The Tenant said his total claim is \$2,280.00. The Tenant continued to say he did not send in any receipts or invoices that he paid, but he did have them in his possession. The Tenant said his claim is his estimate of what he thinks the Landlord owes him for the inconvenience of the water leak in his rental unit.

The Landlord said they tried to fix the broken pipe as quickly as they could and the Landlord provided clean up and drying services to all the rental units that were damaged during the leak. The Landlord said the Tenant lived in the unit while the repairs and drying were being done and the first they heard of his claim was in the Tenant's letter of August 8, 2011. The Landlord said they provide an emergency contact number which is posted on the manager's door and they do repairs as soon as they are reported. The Landlord said in this case the repairs were completed in 1 to 3 hours of the reported problem.

The Landlord continued to say the Tenant lived in the unit while the repairs were being done so he had full use of the rental unit at all times. The Landlord said there is no loss or damage proven.

Analysis

Section 33 of the Act says (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,

- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;
- (b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that the Landlord acted in accordance to the Act by posting an emergency number in the building and repairing the problem in a timely manner. The Tenant has claimed for estimated alternative accommodation, extra utilities paid and other compensation for discomfort and the application costs, but the Tenant has not provided or established any grounds to prove his claims. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. Consequently 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*.

Residential Tenancy Branch