



Dispute Resolution Services

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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 tenants 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 hearing process was explained to the parties. Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and each to the other and make submissions to me.

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

Are the tenants 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 June 1, 2010, and ended on April 15, 2011. Monthly rent was \$1,295.00.

The tenant are seeking a monetary order for \$1,281.67, claiming that they lost use of the rental unit for 10 days due to flooding, loss of a filing cabinet for \$100.00, loss of a computer desk for \$100.00, loss of a computer for \$650.00 and recovery of the filing fee of \$50.00.

The tenants’ relevant evidence included photos of the rental unit, a written statement and written notices from the landlord.

The tenant testified that on September 22, 2010, she noticed a leak and called the building manager, who came immediately to the rental unit. The problem was thought to be a leaking washing machine; however an appliance technician certified that the washing machine was not leaking.

The landlord, according to the tenant, next had a plumber attend the rental unit, and discovered that the leak came from a pipe.

The tenant submitted that during the next 10 days, there were people coming and going in the rental unit, day and night, that the fan noise was constant, all of which led the tenants to suffer a loss of use of the rental unit.

The tenants stated that they could not stay in the rental unit for 10 days, and that they had to go back and forth between the rental unit and their home in another town.

The tenants submitted that due to the carpets being wet for such an extended period of time, they lost a computer, desk and files.

The tenant submitted that the leak also allowed mould to develop, causing the tenants to develop health/breathing problems, from which they still suffer at present.

The tenants admitted that they had renter's insurance at the time of the leak, but did not make a claim for the alleged damages or loss.

The landlord's agent testified he attended the rental unit immediately after being notified of a leak, confirmed that he had an appliance technician check the tenant's washing machine, and when the appliance technician certified that the washing machine was working properly, immediately called the plumber.

The landlord's agent stated that after a leak was discovered in the pipes, he called a restoration company, who immediately attended the rental unit and began immediate remediation.

The landlord's agent stated that it was necessary to pull up the carpets in the affected area, and place fans in the rental unit in order to allow the carpet and walls to dry out.

The landlord's agent stated that he was unaware that the tenants were not staying in the rental unit as he observed them there during this time and using the washing machine.

The landlord's agent stated he did not have any evidence from the tenants regarding alleged health problems. The landlord's agent acknowledged that there was probably some noise from the fans, but that he took immediate action when notified of the leak.

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 claiming party has to prove 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. In this case, the onus is on the tenants to meet this burden of proof.

Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law.

Residential Tenancy Branch 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 as a result of an unforeseen event such as fire or flood. 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, tenants must show that the leak in the rental unit resulting in the flood or leak was a result of the landlord's negligence. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party. Accordingly, I have considered all of the evidence before me to determine whether the tenants have shown that the landlord acted unreasonably in causing the flood.

I find the tenants submitted insufficient evidence to prove that the landlord violated the Act and neglected their statutory duty to maintain the residential property when addressing the issue of the leak. Rather the evidence and testimony supplied by the tenants and landlord demonstrates that the landlord did not cause the leak, but was immediately responsive to the tenants' complaints and addressed the leak repair in an expedient manner.

I also find that the tenants failed to submit sufficient evidence that they vacated the rental unit during the period of restoration and therefore, I cannot determine that they suffered a loss of use of the rental unit.

Although the tenants have not made a specific monetary claim for a loss due to health problems relating to mould, I find the tenants have submitted insufficient evidence to substantiate their claim for health related compensation.

I find the tenants did have a remedy at their disposal, but failed to take advantage of this opportunity by failing to make a claim against their renter's insurance.

Conclusion

Due to the above, I **dismiss** the tenants' application, **without leave to reapply**.

As I have dismissed the tenants' application, I decline to award them the filing fee.

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: October 25, 2011.

Residential Tenancy Branch