



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes PSF, OLC, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution for a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to comply with the Residential Tenancy Act (the "Act") and to provide for services or facilities required by law and to recover the filing fee.

The parties were in attendance at the hearing. The hearing process was explained and thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to 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.

Preliminary Issue

The tenants submitted that they have vacated the rental unit. As result I have excluded the tenants' request for landlord's compliance and to provide for services or facilities required by law from consideration. The hearing proceeded on the tenants' application for a monetary order and to recover the filing fee.

Issue(s) to be Decided

Have the tenants established an entitlement to a monetary order pursuant to section 67 of the Residential Tenancy Act and to recover the filing fee?

Background and Evidence

This month to month tenancy began on January 1, 2010, ended on or about January 25, 2012, according to the tenants, when the tenants vacated the rental unit, monthly rent was \$1,100.00 and the tenants paid a security deposit of \$550.00 at the beginning of the tenancy on or about January 2, 2010.

The tenants' monetary claim is in the amount of \$2,200.00.

In support of their application, the tenant testified that they were forced to move out of the rental unit on January 25, 2012, due to a flood in the washroom and the resulting danger to their child.

The tenant testified the problems with this tenancy began on January 15, 2012, when the landlords, who lived upstairs, turned off the hot water and electricity. According to the tenants, they called the police, who in turn informed the landlords they had to turn back on the hot water and power.

According to the tenants, the landlords the next day again turned off the power and the lights, and the police were called.

The landlords were instructed to turn on the hot water and power, but did not. The tenants submitted that when the landlords turned the hot water back on, the washroom flooded. The tenants stated they again called the police and the landlords were instructed to fix the flooding washroom.

The tenants stated that the landlord never fixed the flood and as a result, their personal possessions were ruined. The tenants also submitted that the landlords entered their rental unit without notice or permission, one time stealing \$900.00 cash.

The tenants' monetary claim is for the value of their lost possessions, such as a television set and mattress.

Upon query, the tenants stated that there were no written requests to the landlord for repair and no police reports were available to submit into evidence.

The tenants' relevant evidence included a written summary of their claim, a receipt dated April 15, 2006, for a television set, a receipt from a rent-to-own store for a bedroom set, dated July 31, 2005, an unreadable receipt from the same company, a print out from a company referencing bedroom furniture, dated November 5, 2005, and photographs of the rental unit.

In response, the landlord testified that they did not turn off the power and water without reason, as that would mean turning off their power and water as well.

The landlord submitted that after a call from the tenants about flooding, it was necessary to turn off the water for a short time to make the repair.

The landlords further submitted that the tenants' borrowed \$20,000.00 from the landlords, the re-payments for which from the tenants being dishonoured by the bank. The landlords then left a message for the tenants to this effect.

After consulting with the bank officials, the landlords were instructed to notify the police. After returning home, the landlords stated that they discovered the rental unit door was left wide open. The landlords stated that as the door was left open and they had not seen the tenants for two days, they entered the property only to discover that the tenants had vacated the premises.

The landlord submitted that it was then necessary to protect the rental unit, which they did.

The landlords denied that the police instructed them to do anything regarding the tenants and that the tenants called the police in retaliation.

The landlords also submitted that the tenants sabotaged the pipes in order to create a flood.

The landlords' relevant evidence included a copy of the cheques totalling \$20,000.00 payable to the tenants, the bank statement indicating non-sufficient funds of the tenants, receipts for the repair of the washroom, and photographs of the washroom.

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 prove damage or loss.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

The landlord is required under section 32 of the Act to provide and maintain a rental unit which complies with health, safety and housing standards and make it suitable for occupation.

In the circumstances before me, I find the tenants supplied deficient and inconclusive evidence which does not meet the burden of proof necessary for a monetary claim.

In reaching this conclusion, I find the tenants failed to demonstrate that the landlord was notified in writing that a problem existed with the plumbing or the power and that

subsequently the landlord failed to take any action. Rather I find the weight of the evidence supports the landlords' assertion that the tenants' created a scenario upon which to create a diversion to take the attention from the tenants' bounced cheques for a loan from the landlords, totalling the amount of \$20,000.00.

I further find that the landlords took reasonable measures to repair the plumbing when notified verbally by the tenants that the washroom flooded. I accept the evidence of the landlords that the tenants vacated the rental unit without notice, without waiting to find out if the landlords would make the necessary repairs to the rental unit.

I was further influenced by the tenants' failure to submit a copy of the police report, which was of great importance to the tenants during their testimony.

I therefore find that the tenants have failed to prove that the landlords violated the Residential Tenancy Act or the tenancy agreement.

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

Even had I not dismissed the tenant's application for his failure to demonstrate or prove that the landlords violated the Act or the tenancy agreement, I would still have dismissed the tenant's application as I also find that tenants failed to submit evidence that they had suffered a loss as I find that the submission of six and seven year old receipts does not substantiate or prove their claim.

Due to the above, I find the tenants have provided no evidence or testimony to substantiate the merits of their claim.

Conclusion

I therefore dismiss the tenants' application, in its entirety, without leave to reapply.

As I have dismissed the tenants' application, I decline to award them recovery of 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: February 17, 2012.

Residential Tenancy Branch