



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This is the Tenant's Application for compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement; for a monetary order for the cost of emergency repairs; for return of the security deposit; and to recover the cost of the filing fee from the Landlord.

Both parties were present at the hearing and provided affirmed testimony.

Preliminary Matter

At the outset of the Hearing, it was determined that the security deposit was extinguished on October 25, 2011, when it was offset against a monetary award for the Landlord as a result of an Application for Dispute Resolution filed by the Landlord. A copy of the Decision and Order of October 25, 2011, was provided in evidence.

The Tenant seeks an Order that the October 25, 2011 Decision and Orders be revoked and that the security deposit be returned to her. I explained to the parties that I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

I find that the disposition of the security deposit has already been decided and therefore, under the principal of *res judicata*, this portion of the Tenant's application is dismissed without leave to reapply.

Issue(s) to be Decided

- Is the Tenant entitled to a monetary award for the cost of emergency repairs and compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to the provisions of Sections 33 and 67 of the Act?

Background and Evidence

This tenancy started on August 1, 2011. The tenancy agreement was a twelve month fixed term lease. Monthly rent was \$1,850.00. The tenancy ended on August 31, 2011.

The Tenant and the Tenant's agent gave the following testimony and evidence:

The Tenant submitted that there were bed bugs in the rental unit. She seeks compensation for bed bug bites to her daughter and her dog.

The Tenant submitted that she spent money and labour for repairs to the rental unit. She seeks to recover the cost of the materials and her labour. The Tenant submitted that she made repairs to the bathroom (new toilet seat, shower, tiles) and to the kitchen plumbing. The Tenant provided 96 photographs in evidence in support of her application.

The Tenant's Application for Dispute Resolution indicates that the Tenant is seeking a monetary order in the amount of \$4,350.00, but the Tenant testified that she is seeking a monetary award, as follows:

| | |
|--|------------|
| Cost of bed bug treatment for dog (receipt provided) | \$149.88 |
| Other compensation | \$923.35 |
| TOTAL | \$1,580.23 |

The Tenant's agent testified that the Landlord and the Tenant had a written agreement that the Landlord would provide new paint, laminate, blinds and a new fence at the beginning of the tenancy. He stated that the Landlord did not do those things and that the rental unit was not ready for the Tenant to occupy on August 1, 2011.

The Landlord gave the following testimony and documentary evidence:

The Landlord stated that the Tenant had advised him that she wished to update a portion of the rental unit and rent it out, to which he agreed. He testified that there was no written agreement between him and the Tenant that he would pay for any renovations because the rental unit was in liveable condition when the Tenant moved in. He submitted that he did have a verbal agreement to buy paint and a new washer and dryer for the rental agreement, which he did. The Landlord provided a written statement from a property manager who had viewed the rental property in July, 2011. The written statement confirms that the rental unit was in reasonably good condition and that a family was living in it.

The Landlord testified that in late August, 2011, the Tenant advised him that she believed there were bed bugs in the rental unit. He stated that he hired a pest control company to investigate, but that no bed bugs were found. The Landlord provided a

copy of the invoice from the pest control company, dated August 29, 2011, in evidence which indicates no sign of bed bugs.

The Landlord questioned the photographs, stating that he didn't recognize them as being pictures of the rental unit.

Analysis

This is the Tenant's claim for damage or loss and therefore the Tenant has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenant has not provided sufficient evidence to prove that she suffered damage or loss due to the actions or neglect of the Landlord. The Tenant testified that she had a written agreement with the Landlord that he would pay for her renovations to the rental unit, but did not provide a copy of the written agreement.

The Tenant provided a copy of an invoice from a veterinarian with respect to treatment to her dog for bed bug bites. However, there is insufficient evidence that the bed bugs were in the rental unit, or (even if they were) that the Landlord was neglectful in his responsibilities under Section 32 of the Act. The original source of a bed bug infestation is almost impossible to determine. I find that the Landlord, once notified of the Tenant's concerns, took immediate steps to address her concerns by hiring a professional pest control company to investigate.

The Tenant was not clear with respect to how much compensation she sought, or for what specific reason. For example, her Application indicates that she is seeking \$4,350.00, but she gave verbal testimony that she was seeking a total of \$1,580.23. She was not specific about how she arrived at the latter figure, and in particular the sum of \$923.35, and did not provide a Monetary Work sheet to clarify her claim.

Therefore, I find that the Tenant has not satisfied parts 1, 2 or 3 in the test for damages set out above and the Tenant's application for compensation for damage or loss is dismissed.

Section 33 of the Act defines "emergency repairs" as repairs that are:

- Urgent;
- Necessary for the health or safety of anyone or for the preservation or use of residential property, **and**
- Made for the purpose of repairing major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, damaged or defective locks that give access to the rental unit, or the electrical system.

If a landlord is duly notified that there are emergency repairs to be made and does not make emergency repairs in a reasonably timely manner, then the tenant may make the repairs and the landlord must reimburse the tenant if the tenant provides him with a written account of the repairs, accompanied by receipts. I find that the Tenant did not provide sufficient evidence that emergency repairs to the rental unit were urgent or required and therefore her application to be reimbursed for the cost of emergency repairs is dismissed.

The Tenant has not been successful in her application and therefore I find that she is not entitled to recover the cost of the filing fee from the Landlord.

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: February 01, 2012.

Residential Tenancy Branch