



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to compensation for damage or loss in the sum of \$2,848.80?

Is the tenant entitled to filing fee costs?

Background and Evidence

The tenancy commenced on May 1, 2011; on April 22, 2011, the tenant met with the landlord at the unit and signed the condition inspection report. Rent was \$1,500.00 per month, due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The tenant has made the following claim:

7 month rent reduction 350.00/month for out-of pocket expenses, substandard unit and appliances, stained carpet and dealing with unreasonable landlord	2,450.00
Appliance invoice	128.80
TOTAL	2,848.80

The condition inspection report indicated 2 deficiencies with the unit; the bedroom carpet was damaged near the door and the laundry room door was missing. The tenant testified that the report was completed in a hurry and that it did not reflect the stage of the unit when she took possession on April 27, 2011. Both parties agreed that some belongings were in the unit on April 22, 2011; a desk, table and clothes rack; the landlord agreed there was only a desk in the unit.

When the tenant took possession of the unit the landlord was out of the country; her son met with the tenant at the unit. When the tenant told the landlord's son that the unit was not clean and required attention the son told her he was not the agent and there was nothing he could do.

The tenant spent time at the start of the tenancy cleaning the unit. She hired someone to assist and paid that individual cash for cleaning. The dishwasher and garburator did not work and the fridge made loud sounds. The carpet was stained, the walls were marked and the tile grout was dirty and would not come clean.

The tenant felt she had no recourse but to deal with the rental issues on her own; she did not contact the landlord via the service address supplied on the tenancy agreement; nor did she call the landlord to discuss the deficiencies.

The tenant supplied a copy of an invoice dated September 28, 2011, for an inspection of the dishwasher, which she had arranged. It was determined that the motor was seized; however, the tenant did not notify the landlord of this deficiency.

The landlord stated she spoke with the tenant over the telephone on October 20, 2011; they then met at the unit and the landlord carried out an inspection. When the landlord had called the tenant she complained about the state of the rental unit; the landlord discovered that the garburator and dishwasher were not working.

The tenant stated that on October 20, 2011, she gave the landlord a list of deficiencies, most of which had already been addressed by the tenant. The landlord stated she did not see this list until she was served with the hearing package.

On October 21, 2011, the landlord called a plumber, who repaired the garburator on November 16, 2011.

On November 16, 2011, a new dishwasher was delivered, but when unpacked damage was discovered. The appliance was left in the living room to await pick-up by Sears. By the time the appliance company picked up the appliance and replaced it with a unit that was not damaged, the tenancy had ended by mutual agreement.

The tenant stated she did not entertain in the unit due to the appearance of the flooring and carpets. The tenant stated the landlord misrepresented the unit, that the tenant assumed it would be clean when she took possession, that it was not and that the landlord had rushed her through the initial viewing.

The tenant provided photographs of the carpets, windows, window sill, light switch plates, damage to the wall behind the toilet, dirty tile grout and a dirty fan.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

In relation to the tenant's claim requesting rent reduction over a 7 month period; the complete term of the tenancy, I find, on the balance of probability that the tenant has failed to take any steps to mitigate the loss she is now claiming.

The tenant confirmed that she had been given the landlord's service address, as part of the tenancy agreement. The tenant did not call the landlord, did not write the landlord or make any other attempt to express any concerns in relation to the state of the unit, with the exception of her initial comment to the landlord's son. If the tenant had asked the landlord's son to respond and he failed, I would expect the tenant to have placed her concerns in writing, then, if the landlord failed to adequately respond, the tenant would have been at liberty to submit an application requesting repairs and cleaning at an early stage of the tenancy; thus minimizing any future claim.

Therefore, in the absence of any attempt to reach the landlord so that deficiencies could be addressed, I find that the tenant failed to mitigate the loss she is claiming and that the rent reduction claim is dismissed.

Further, in the absence of any verification of the sum claimed for cleaning I dismiss the cleaning costs portion of the claim.

The tenant hired a technician to inspect the dishwasher without prior notice to the landlord. Once the landlord was aware of the issues with the dishwasher and garburator the appliances were replaced. If the tenant had received permission from the landlord to have the machines inspected, then the landlord could have responded to the outcome of the inspection. It is not reasonable to expect the landlord to respond to concerns when the landlord was not notified of the deficiencies. Therefore, the claim for the dishwasher technician costs is dismissed.

Conclusion

The tenant's claim 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: April 24, 2012.

Residential Tenancy Branch