



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This conference call hearing was convened in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of a multi-unit family complex. Pursuant to a written agreement, the month to month tenancy started in September 2011. The rent was \$400.00 per month.

The tenant testified that a flood occurred in the rental unit while she was away. She stated that when she came home someone was already there evaluating the damages and advising her not to let anyone in the unit. She stated that the landlord evicted her without giving her any proper notice and that she moved out the next day. She said that she did not cause the flood and was forced to move 8 days before the end of the month.

The tenant provided a monetary worksheet for the following claim:

- | | |
|-----------------------------------|-----------|
| - Vet bill: | \$ 70.00 |
| - Back rent: | \$ 116.10 |
| - Emergency move & storage costs: | \$ 590.00 |
| - Stress of moving: | \$1000.00 |

- Total: \$1776.10

The landlord testified that he was informed of the flood by another tenant in a different unit and that he immediately dispatched a restoration contractor to the site. He stated that he was told that there was an inch of water, identified as category 3 meaning sewer water, throughout the unit. He said that the contractor also informed him that water seeped into the walls; and that due to the age of the building repairs would include asbestos abatement; he said that for these reasons that the tenant could not stay while these repairs are conducted, but that the tenant is welcome to move back in once they are completed.

In his documentary evidence, the landlord provided a copy of the contractor's emergency report, citing a toilet tank leak as the cause, and the extent of repairs. The landlord said that the repairs are extensive and that the total cost is approximately \$20,000.00.

Analysis

Before a Dispute Resolution Officer can make an order under section 67 of the *Residential Tenancy Act*, the applicant must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant took steps to mitigate or minimize the loss or damage. In this matter that burden was on the tenant to prove her claim against the landlord.

Based on the evidence I find that the landlord did not breach the Act or the tenancy agreement. The water leak was accidental and not triggered by the landlord's neglect. The landlord took the necessary steps to make extensive repairs caused by significant water damage. The Act allows a party to make a claim for compensation associated with statutory or contractual breaches. In the absence of such evidence I find no basis on which to award the tenant compensation as claimed. The tenant's intangible claim for stress was not supported by evidence that the landlord acted in such a wilful, reckless or indifferent manner that the landlord was responsible for the stress or anxiety suffered.

Concerning the rental income; the tenant said that the landlord evicted her on January 22nd without proper notice. The tenant acted upon it and moved out the next day. I accept that in the circumstances the nature of the damages would have caused the tenant to eventually move out because the tenancy was frustrated. The tenant paid rent

for that month and I allow the tenant to recover the balance of that month's rent. At \$400.00 per month and with 31 days in January, the per diem rate is \$12.90. I award the tenant 9 days from January 23rd to January 31st, 2012 totalling \$116.10.

Conclusion

Pursuant to Section 67 of the Act, I grant the tenant a monetary order for \$116.10.

This Order may be registered in the Small Claims Court and enforced as an order of that Court.

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 03, 2012.

Residential Tenancy Branch