



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This matter was reconvened from a Hearing which took place on March 15, 2012 with respect to the Tenant's Application for compensation for damage or loss under the Residential Tenancy Act (the "Act"), regulations, or tenancy agreement. The Hearing was adjourned on March 15, 2012, to allow the Landlords to file a cross application and for the parties to provide a copy of the tenancy agreement. **An Interim Decision was made on March 20, 2012, which should be read in conjunction with this Decision.**

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Preliminary Matters

The Landlords were ordered to file their cross application by March 29, 2012. On March 30, 2012, the Landlords provided documentary evidence to the Tenant's file. The Landlords did not file their own Application. The Landlord stated that he thought that by filing documentary evidence, he was filing an Application. I explained to the Landlord that this was not so and that the Landlords were required to fill out an Application for Dispute Resolution form, pay the filing fee, and serve the Tenant with the Notice of Hearing documents.

The Hearing continued with respect to the Tenant's Application. **The Landlords remain at liberty to file an Application for Dispute Resolution should they so desire.**

Issues to be Decided

- Is the Tenant entitled to the monetary award pursuant to the provisions of Section 67 of the Act?

Background and Evidence

There was some discussion between the parties about compensation to which the Landlords believe they are entitled. The parties attempted to come to an agreement with respect to the Landlords' potential claims but were unsuccessful.

At the Hearing on March 15, 2012, the parties could not provide certain details about the tenancy, in particular with respect to the amount of the security deposit paid. On March 30, 2012, the Landlords provided a copy of the tenancy agreement in evidence, which indicates that the Tenant paid a security deposit in the amount of \$400.00 at the beginning of the tenancy.

The Tenant is applying for compensation for damage to her mattress and a shelving unit arising from a leak in the laundry room at the rental property. The Tenant testified that she advised the Landlord about the leak in late November or early December, 2011, but the Landlord did nothing to repair the damage or look for the leak. The Tenant stated that she did not make any request in writing to the Landlord with respect to the leak or her damaged furniture.

The Landlord testified that he thought the problem was with a perimeter drain and that he fixed it shortly after the Tenant advised him of the leak.

The Tenant replied that the leak was not fixed and that she told the Landlord in January, 2012, when he was at the rental unit to do repairs in the kitchen, that the leak had not been fixed.

The Landlord had no recollection of such a conversation. He stated that communication was difficult with the Tenant because of the Tenant's broken down relationship with her roommate. He stated that he asked the Tenant to move her mattress and shelving unit away from the area of the leak. The Tenant replied that there was nowhere else for her to place the furniture. She testified that she and her roommate had separate tenancy agreements with the Landlord for the two storey rental unit and that up until the last few days of the tenancy, her bedroom was in the basement of the rental unit beside the laundry room. She stated that she had to move upstairs because of the deteriorating relationship with her roommate.

During the Hearing on March 15, 2012, the Tenant testified that she paid \$300.00 for her bed. She also testified that she paid \$75.00 for the shelving unit. She stated that she left the box spring, couches, shelving unit and some garbage behind when she moved because she had to go in a hurry. She stated that she expected the Landlord to keep the security deposit to cover the cost of removing these items from the rental unit.

During the reconvened Hearing, the Tenant stated that she bought the mattress and box spring new for \$600.00 just before she moved into the rental unit, and that she bought the shelving new for \$150.00 at the same time. The Tenant seeks compensation in the amount of \$150.00 for the mattress and \$75.00 for the shelving unit. The Tenant also seeks to recover the cost of sending documents to the Landlord via registered mail, in the amount of \$11.72.

Analysis

Section 67 of the Act provides that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Tenant seeks to recover the costs of registered mail. This is not considered damage resulting from the Landlord not complying with the Act, regulation or tenancy agreement. There is no provision in the Act for recovery of these charges by either party, and this portion of the Tenant's application is dismissed.

This is the Tenant's claim for damage or loss under the Act 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 Landlords 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 Tenant in violation of the Act,
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 failed to meet the test for damages as set out above. There was insufficient proof that the damage or loss existed or that if it did exist, that it was as a result of the actions or neglect of the Landlords. The Tenant was vague and contradictory in her testimony with respect to when and how she notified the Landlords about the leak; the value of the mattress and the shelving unit; and why she could not move the mattress and shelving unit to another area in the house after the leak occurred, thereby minimizing her loss.

The Tenant's application is dismissed.

Conclusion

The Tenant's application is dismissed in its entirety.

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 27, 2012.

Residential Tenancy Branch