



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, SS

Introduction

This hearing was convened in response to the tenant's application seeking:

1. A monetary Order for damage and/or compensation for loss;
2. An Order that the landlord make repairs;
3. An Order that the landlord provide services and facilities agreed upon but not being provided;
4. An Order that the landlord return personal property;
5. An Order that the tenant be allowed to serve documents by way of substituted service;
6. An Order to recover the filing fee paid for this application; and
7. An Order to be allowed to serve the tenant by way of substituted service.

The tenant submitted that she did not intend to make application for an Order to be allowed to serve the landlord by way of substituted service. This application is therefore withdrawn.

Both parties appeared at the hearing of this matter and gave evidence under oath.

Issue(s) to be Decided

Is the tenant entitled to the Orders sought?

Background and Evidence

The tenant submits that there was a major flood in the rental unit due to a pipe bursting. The tenant says that a restoration company was engaged and that company attended at the rental unit to box and remove all of the tenant's goods while repairs were made. The restoration company then presented an invoice in the sum of \$6,268.28 to the tenant for their services for cleaning, deodorizing and storing all of her items. The rental unit also contained some of the landlord's goods and the landlord's insurer was billed for cleaning, deodorizing and storing all of the landlord's items in the sum of \$2,011.77.

the tenant says she does not have insurance coverage to pay her invoice and the restoration company is refusing to return her goods until the invoice is paid. The tenant testified that a few days before the hearing she borrowed money from friends and family and paid \$5,000.00 towards the bill but she cannot pay the rest. The tenant did not have proof of payment of the \$5,000.00 because she says she paid this sum only a few days before this hearing. The tenant says she realizes that the burst pipe is not the landlord's fault but she questions how she can be expected to pay the costs of removing and cleaning her goods. The tenant submitted that she did not know she should have purchased insurance. The tenant has not returned to live in the rental unit since the flood.

The landlord submitted an invoice from Phoenix Restorations addressed to the landlord's insurance company to cover the cost of cleaning, deodorising and storing all of her own goods. The landlord was insured so her insurance paid the costs of repairs to the rental unit and the removal of removals of her own goods which were in the rental unit. The insurance did not cover the costs of packing, cleaning and storing the tenant's goods.

Analysis

The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong. The evidence in this matter is that there was a flood in the building as a result of a burst pipe and that the flood damaged the rental unit and some of the goods in the rental unit. The landlord had insurance coverage to repair and restore the rental unit and to remove the landlord's goods from the rental unit but this insurance coverage did not cover the costs of repairing and restoring the tenant's goods. The tenant now seeks the costs of repairing and storing the tenant's goods from the landlord but she has failed to bring sufficient evidence to show that the landlord was negligent in any way with respect to causing the flood. In fact the tenant agrees that the burst pipe was not the fault of the landlord. Without being able to show that the landlord breached a duty of care owed to her and that the flood and subsequent losses were a result of that breach I am unable to find that the landlord should be responsible for paying the costs of repairing, restoring and storing the tenant's goods.

The tenant's application is dismissed.

With respect to the balance of the tenant's claims, as this tenancy has ended these claims are also 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: June 15, 2012.

Residential Tenancy Branch