



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 convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and to recover the filing fee.

The three of the four tenants listed in the tenancy agreement and the landlord were in attendance at the hearing. The hearing process was explained and thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order pursuant to section 67 of the Act and to recover the filing fee?

Background and Evidence

This six month, fixed term tenancy started on September 1, 2011, ended on or about February 29, 2012, monthly rent was \$1600.00 and the tenants paid a security deposit of \$800.00. The security deposit has been returned to the tenants.

The tenants' monetary claim is \$1201.16, for compensation for their hydro bills and \$163.69 for their water bills during the tenancy.

Tenant's testimony-

The tenants' electric bill was in excess of the expected amount, due to the discovery of heaters in the crawl space of the rental unit, which was a single family dwelling.

The tenants were unaware of the heaters and therefore unaware that the heaters underneath their flooring had been turned on since the tenancy began. The tenants did not discover the heaters until several months after the tenancy began, after noticing that their floors were quite warm.

The landlord was responsible for ensuring the heaters were turned off as well as informing the tenants of the existence of the heaters.

When questioned as to why the tenants applied for compensation for reimbursement of all hydro costs throughout the tenancy, the tenants replied that they were told by the Residential Tenancy Branch (“RTB”) to apply for the entire amount and let the Dispute Resolution Officer (“DRO”) figure out what they would be owed.

As to the request for reimbursement of the water bill, the tenants claimed to be entitled to a refund due to a leaking sink and toilet, which caused an over usage.

When questioned, the tenants said they informed the landlord of the broken toilet, which he then fixed. However the repair was not effective and the tenants did not “bother” requesting a further repair during the rest of the tenancy.

Landlord’s testimony-

At the beginning of the tenancy, the parties performed a condition inspection of the rental unit and the heaters were pointed out to the tenants. Only one of the heaters was working and it was installed to reduce the effects of lack of insulation in the flooring.

The tenants had complete access to and controlled the entire house during the tenancy, and it was their choice to turn on the heaters.

As to the water bill issue, the tenants never raised any issue about excess water usage during the tenancy, additionally pointing out that the tenants agreed to the landlord retaining \$100.00 from the tenants’ security deposit at the end of the tenancy due to an unpaid water bill by the tenants.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming parties, the tenants in this case, have to prove four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In the circumstances before me, the tenants provided insufficient evidence of an entitlement or any basis to be awarded reimbursement of their entire utility bills during the tenancy. A review of the tenancy agreement shows that the landlord was not responsible for the electricity for the rental unit.

I further find the tenants failed to demonstrate that the landlord violated the Residential Tenancy Act or the tenancy agreement or was negligent, which is step 2 of their burden of proof. In reaching this conclusion, I find the tenants were in control of the entire home during the tenancy and therefore had exclusive control of the heater thermostat.

As to the tenants' request for reimbursement for their water bill, the tenants confirmed that the landlord made the repair after their written request. I find no further evidence of the tenants notifying the landlord that the repair did not work or making further requests for repair. Due to this, I find the tenants did not take reasonable steps to mitigate their alleged loss, which is step 4 of their burden of proof.

Due to the above, I find the tenants have provided insufficient evidence to substantiate the merits of their claim.

Conclusion

I therefore dismiss the tenants' application, in its entirety, without leave to reapply.

As I have dismissed the tenants' application, I decline to award them recovery of the filing fee.

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 27, 2012.

Residential Tenancy Branch