



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, PSF, RR

Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act, regulation or tenancy agreement, for the Landlord to comply with the Act, to make emergency repairs, to make repairs to the unit, to provide services or facilities required by law and to allow the Tenants to reduce the rent for repairs and for services and facilities agreed upon but not provided.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on August 11, 2012. The Landlord said he received the hearing package from the Tenant. Based on the evidence of the Tenant and the Landlord, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there a loss or damage and if so how much?
2. Are the Tenants entitled to compensation for the loss or damage and if so how much?
3. Are there repairs needed?
4. Has the Landlord complied with the Act, regulations and tenancy agreement?
5. Are the services and facilities agreed to being provided?
6. Are the Tenants entitled to a rent reduction and if so how much?

Background and Evidence

This tenancy started in June 1, 2012 as a fixed term tenancy with an expiry date of May 31, 2013. Rent is \$1,300.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$200.00 on June 20, 2012.

The Tenant said there was a flood in the basement of the rental unit in the early part of June, 2012. The Landlord was contacted and the Tenant said the Landlord sent a repair man to the rental unit immediately. The Tenant continued to say there was some difficulty discovering the source of the flood, first they thought it was the washing machine, and then they thought it was the septic tank backing up and then they discovered the sump pump for the septic was not plugged in. The Tenant continued to

say that after they plugged the sump pump in the problem continued as the electrical breaker kept flipping off. The Tenant said the problem was fixed in mid August, 2012 and the system appears to be working now. The Tenant added that she still can smell a bit of sewer smell in the downstairs washroom.

As a result of the flooding the Tenant said her belonging that were stored in the basement were damaged or had to be thrown out due to the flooding and the high humidity as a result of the flooding. The Tenant said she is making a monetary claim of \$25,000.00 for damage and loss to her belonging as a result of the flooding in the basement of the rental unit. The list of damages includes \$8,450.00 for damage to furniture, \$3,450.00 of loss clothing and shoes, \$940.00 of household items, \$250.00 of Christmas items, \$3,045.00 of lost books and craft supplies and an estimated loss of \$10,000.00 for damages not yet assessed. The Tenant said her total claim for loss or damages is adjusted to \$25,000.00. The Tenant said her loss and damage was a direct result of the flooding of the basement and the high humidity that resulted from the flood.

As well the Tenant said that the Landlord has responded to the other repair items that she has written to the Landlord about, except the replacement of the frig and the repair of the back deck. The Landlord said the back deck will be repaired by the end of September, 2012 and a new frig has been scheduled to be delivered to the rental unit on September 15, 2012. The Tenant said she was satisfied with the Landlords commitment as the Landlord had done what he had said he would do in the past.

The Landlord said that he has responded to the Tenants complaints and the flooding issue in a timely and responsible manner. The Landlord said the flood issue is resolved and the flooding was not as bad as the Tenant has described it. The Landlord called a witness P.P. to testify about the flooding and other repair work. The Witness P.P. said that the flooding issue was a result of the sump pump not being plugged in and the electrical breaker being faulty. The Witness P.P. said these items are repaired. The Witness P.P. also said the flooding covered about 20% of the basement floor in the laundry room and the washroom and that when he was there the water was about 1 inch deep. The Witness continued to say the water was quite clean and had a soap smell to it. The Witness continued to say he had done a number of repairs in the house and he agreed the back deck needed to be repaired or replaced as there was rotten boards in the decking and on the railing.

The Landlord's Counsel said that the Landlord has acted in a responsible and timely manner in repairing the flood problem and with other things the Tenant has requested and the Landlord has committed to a new frig and to repair the bad deck; therefore the Tenants claims for repairs, to provide services and facilities agreed to and for the Landlord to comply with the Act have been done. The Tenant agreed the Landlord has

done these things and the Tenant said she believes the Landlord has tried his best even if she thought he was a bit slow in doing these things. The Tenant said the Landlord has repaired or has committed to repair the items she has requested the Landlord to do. The Landlord's Counsel continued to say that the Tenant has not provided any corroborative evidence to support her monetary claim of \$25,000.00; therefore the Landlord is unable to examine or refute the validity of the Tenant's claim; therefore the Landlord's Counsel said the claim is without merit and should be dismissed.

The Tenant closed her remarks by saying that she did not know that she had to send in evidence to support her claim and if she did know that she would have done so. The Tenant continued to say that it was not fair that her claim may fail because she did not know what to do when making a claim against someone.

The Landlord's Counsel said that the Tenant had legal counsel on another claim against the Landlord, but that claim was not part of this hearing.

Analysis

As both parties agree that the Landlord will provide a new frig by September 15, 2012 and the Landlord has committed to repair the back deck by the end of September, 2012, I will not make an Order for these two things to happen, but I will note that the parties have agreed to this and they are bound to this agreement under section 63 of the Act as a mediated settlement.

In making a claim for loss or damages the Claimant must first prove the damage or loss exists. The Claimant must also prove the damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act, the regulations or the tenancy agreement and Claimant must prove that they took steps to mitigate or minimize the loss or damage. In this situation the Tenant has not provide any corroborating evidence to support her claim and as such the Tenant has not proven the loss or damage actually exists or that it happened solely because of the actions of the Landlord.

As well the burden of establishing proof is the responsibility of the applicant. In a situation where there is no corroborating evidence provided to substantiate the claim the burden of proving a claim relies only on the testimony. When it is just the Applicants word against the Respondents word then the burden of proof is **not** met and the claim does not have grounds to be established. Consequently I find the Tenant has not



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Office of Housing and Construction Standards

established grounds to prove her monetary claim of \$25,000.00 for loss or damage, because the Tenant did not provide any corroborating evidence. I dismiss the Tenants' monetary claim for \$25,000.00 without leave to reapply.

Conclusion

The Landlord has agreed to provide a new frig to the Tenant by September 15, 2012 and to repair the back deck by September 30, 2012.

The Tenant monetary claim for \$25,000.00 is dismissed without leave to reapply.

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*.

Dispute Resolution Officer