



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with 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 for recovery of the filing fee.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and to recover the filing fee?

Background and Evidence

The parties agreed that this month to month tenancy began "three months ago," monthly rent is \$1700.00, and the tenants paid a security deposit of \$850.00 at the beginning of the tenancy.

The parties agreed there is no written tenancy agreement.

The tenants' original monetary claim listed on their application was in the amount of \$13,100.00. There was no specific monetary breakdown as to the amount requested; however the tenant said that they would like to reduce this amount to \$2000.00. I therefore amended their application to request a monetary order in the amount of \$2000.00.

The tenant explained that the amount requested was for moving expenses to be able to move from the rental unit. When questioned, the tenants said the rental unit was unsafe and not permitted for occupancy, leading to their planned move as they could not acquire insurance.

When questioned further, the tenant confirmed that they had not incurred an expense for moving as of the day of the hearing.

In response, the landlord claimed that the house was safe to live in, that the tenants could live in the rental unit and that the tenants could acquire insurance.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenants in this case, has to prove, with a balance of probabilities, 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**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

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

I find the tenants failed to submit proof of any expense incurred and therefore they have failed to meet the third step of their burden of proof.

As the tenants failed to submit proof that the rental unit was unsafe, I also find that the tenants failed to prove that the landlord was negligent or that her actions caused a loss, the second step of their burden of proof.

Additionally, as to the tenants' claim for moving expenses, these are choices the tenants made or will be making, both in entering into a tenancy and ending a tenancy,

on how to facilitate their moving and I find the tenants have failed to provide sufficient evidence to hold the landlord responsible for choices made by the tenants.

Conclusion

Due to the above, I find the tenants submitted insufficient evidence to support their claim that the landlord was negligent or that they suffered a monetary loss due to the actions of the landlord.

I therefore dismiss the tenants' application for a monetary award, without leave to reapply.

As I have dismissed the tenants' monetary claim, 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: October 10, 2012.

Residential Tenancy Branch