

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss, to be allowed to reduce rent for repairs, services or facilities agreed upon but not provided and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the submitted evidence of the other party, I am satisfied that both parties have been properly served.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (postage, photographs, copy) are dismissed.

The Tenants indicated at the beginning of the hearing that they have vacated the rental unit as of October 15, 2012 and as such withdraw the request to be allowed to reduce rent. No further action is required for this portion of the application.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that the Tenancy began on January 1, 2012 and ended on October 15, 2012. Neither party provided any further details of the tenancy agreement other than that a signed tenancy agreement was made.

The Tenant seeks a monetary order for \$2,775.00. This consists of the loss of wages of \$600.00 by the Tenant, K.S., who waited for a plumber repair call at the rental unit on July 10, 2012 who did not attend. The Landlord disputes this claim stating that there was no agreement with the Tenant for compensation as it was arranged for a plumber to attend as soon as possible to fix a water leak. The Tenant seeks \$350.00 for 14 hours of cleaning at \$25.00 per hour for the 8 occasions where cleaning was required

after the Landlord responded to requests to fix water leaks. The Landlord disputes the number of hours required for cleaning, but confirms that there were 8 occasions where he or a plumber immediately attended to address the Tenant's complaints of water leaks. The Tenant seeks \$500.00 as compensation to the risk to health because of black mold over a 5 month period (\$100.00 X 5). The Tenant is also seeking \$450.00 for 9 days of no water due to a shut-off for plumbing repairs. The Tenant states that they seek \$25.00 per day for themselves and \$25.00 per day for the sub-tenants. The Tenant states that the sub-tenants, T.S.(witness/daughter) were compensated this amount in lieu of rent paid. The Tenant's witness, T.S. stated in her direct testimony that in lieu of rent she was compensated \$525.00 during the tenancy which consists of \$500.00 for the mold problem and \$25.00 for having no water. The Landlord disputes the Tenants claims, but states that all water leaks were reported to the Landlord/Owner for repairs during the Tenancy and that there were no reports of mold until August of 2012. The Landlord does state that there could have been a mold problem. The Tenants also seek the loss of rental income of \$875.00 because they moved out of the rental unit and allowed the sub-tenants to move into their unit rent free. The Landlord states that he has no comment on this issue as he does not have any information regarding it.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four 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 other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based upon these four elements I find that the Tenants have failed to satisfy me of their losses and damage claims. The Tenants have failed to provide any details/records of any losses or of any expenses incurred. However, the Landlord has admitted that there were multiple water leaks requiring attention during the Tenancy and that on each occasion the Tenants did have to make extensive cleaning efforts. Residential Tenancy Branch Policy Guideline #16 states, "An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there

has been an infraction of a legal right.” On this basis, I find that the Tenants are entitled to a nominal award of \$350.00 for cleaning and compensation for loss of use for the water. This monetary order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Tenants are granted a monetary order for \$350.00.

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: November 27, 2012.

Residential Tenancy Branch