



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This hearing was convened in response to an application filed by the tenant seeking money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and recover their filing fee.

Both parties attended the hearing and were each given opportunity to discuss their dispute, present relevant evidence, make relevant submissions, and provide testimony. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be determined

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The undisputed evidence in this matter is that in September 2012 the rental unit experienced a water backflow from the kitchen sink but the issues associated with the problem were not determined or resolved by the landlord, and that on October 07, 2012 it occurred again and the landlord then determined to address the problem via the services of a plumber.

The tenant claims that as a result of the first water backflow they suffered a quantum of water damage to some of their belongings and also expended time and effort to clean up the issues associated with the water backflow; and, advised the landlord of the problem. The landlord agrees they were alerted, but determined not to assess or address the problem as it was a single occurrence and the reasons for the problem were not apparent, and the tenant had already cleaned up after the occurrence. On October 07, 2012 the same problem occurred again and the tenant alerted the manager to resolve the problem, and the landlord, this time, addressed the problem with a plumber who determined that there was something causing the backflow somewhere in the property's plumbing, but could not determine the source of the problem. There was

no determination that the backflow resulted from the conduct or actions or neglect of the tenant or the landlord. None the less, the tenant seeks loss for damages of spoiled foodstuffs, cookware, devaluation in the tenancy due to water damage to the cabinetry, and a quantum for the tenant's labour to repeatedly clean up after the water backflow. The tenant provided digital evidence of photos and video in support of their claim. The landlord does not agree that they should compensate the tenant for their loss and rely on Section 33 of the Act respecting emergency repairs in support of their disagreement.

Analysis

In this matter the burden of proving claims of loss and damage rests on the claimant (tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the claimant (tenant) take reasonable steps to mitigate or minimize the loss? Section 7 of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the damage or loss occurred solely because of the actions or neglect of the Respondent (landlord) in violation of the *Act* or agreement.
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The tenant bears the burden of establishing their claim by proving the existence of the loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the claimant must show that reasonable steps were taken to address the situation and

to mitigate the losses that were incurred. I find that the landlord's testimony respecting Section 33 of the Act – Emergency Repairs – is not relevant or material to the issues in this dispute.

I find that the evidence in this matter is that the landlord was placed 'on notice' in September 2012 that a problem with the plumbing of the residential property had occurred but did not investigate. There is no evidence to suggest the landlord did not believe there was a problem or that the tenant suffered some loss of quiet enjoyment as a result of the first incident. On balance of probabilities, I find that the landlord was negligent in ignoring the first occurrence and request of the tenant to address the cause behind the water backflow. As a result, I find that the tenant had to endure a second occurrence and disruption of their tenancy. I find the landlord's negligence and non-compliance with the Act likely resulted in the tenant's loss. On the balance of probabilities I find the tenant has met the test for damage and loss and as a result I find the tenant is entitled to a reasonable amount in compensation. In this matter, I find the tenant's requested amount is reasonable. I grant the tenant compensation in the requested amount of \$200.00, without leave to reapply. As the tenant was successful in their claim, I will allow recovery of their filing fee of \$50, for a total entitlement of **\$250.00**.

Conclusion

The tenant's application **is allowed**.

I Order that the tenant **may deduct \$250.00 from a future rent**, in satisfaction of their monetary award.

This Decision and Order is final and binding on both parties.

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 15, 2012

Residential Tenancy Branch