



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 an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the Tenant be granted a Monetary Order?

Background and Evidence

The parties agreed they entered into a fixed term tenancy agreement that began on May 15, 2012 which is set to switch to a month to month tenancy after November 30, 2012. Rent is payable on the first of each month in the amount of \$965.00 and on April 24, 2012 the Tenant paid \$482.50 as the security deposit.

The Tenant submitted 39 pages of evidence which included, among other things, copies of: her written statement, photos of her damaged possessions, her tenancy agreement, and move in condition inspection report form.

In response, the Landlord submitted 13 pages of evidence which included, among other things, copies of: the Landlord's written statement, a letter written to the Tenant on September 12, 2012 compensating the Tenant for hydro use during the flood cleanup, and copies of the tenancy agreement.

The Tenant advised that on August 6, 2012, she suffered water damage when a water pipe broke and caused her unit to flood. She said there was approximately 10 mm of water in her rental unit which damaged all of her electronics, the bottom of all of her furniture, and all of her winter clothing that was stored under her bed.

The Tenant advised that she moved all of her stored clothing out to her balcony on the day of the flood. She confirmed she did not attempt to launder her clothing claiming she was too busy to deal with the issues because the flood happened when she was writing her final exams. She stated she is of the opinion that she suffered the loss because of poor management of an old building.

The Landlords confirmed there was a flood on August 6, 2012 at approximately 7:00 p.m. which occurred after a pipe broke in a unit located directly above the Tenant's unit. They argued that they acted reasonably by having a crew at the site within hours to stop the leak and extract the water. The next day they had a professional carpet cleaning company clean and deodorize the carpet.

The Landlords stated that a week later, on August 13, 2012 the Tenant requested to move to another unit. They were willing to accommodate her request and told the Tenant she could move right away and they would waive the transfer fees. The Landlords said the Tenant refused their offer for an immediate move because she was staying with friends for a few days before going on a holiday so they offered to provide her additional cleaning and deodorizing but she refused them access to the unit.

The Landlords submitted they attempted to accommodate the Tenant as best they could. They argued that the Tenant's loss was beyond their control as the leak came from another suite. They noted that their tenancy agreement stipulates tenants are to have tenant's insurance to cover their possessions in incidents like these as the Landlord's building insurance does not cover a tenant's possessions. They believe they addressed the situation in an appropriate manner at the time of the leak.

In closing, the Tenant confirmed she did not have insurance on her contents; she did refuse to move immediately because she was going away on a holiday; and she did not have time to clean her clothes after the flood because she is a student and was very busy with final exams. She confirmed that her claim was to cover the cost to replace her

broken electronic items, for damage to her furniture, and for damage to all of her winter clothes that were stored under her bed.

Analysis

When a claim for damage or loss is brought forward 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.

The evidence supports the Tenant suffered a loss when her possessions were damaged by a flood on August 6, 2012. Notwithstanding the Tenant's argument that the loss occurred because of the Landlord's mismanagement of an old building, I find there to be insufficient evidence to prove the loss was due to the actions or neglect of the Landlord or that the Landlord breached the Act, Regulation or tenancy agreement.

The Tenant has sought \$2,000.00 to cover the cost of her loss however there were no receipts submitted to prove this amount. The Tenant indicated in her written submission that her loss was greater than \$2,000.00.

Each party provided a copy of the tenancy agreement which stipulates the following on the bottom of page 3:

ALL TENANTS ARE ADVISED TO CARRY THEIR OWN TENANT'S INSURANCE. THIS COVERS ALL PERSONAL POSSESSIONS, WATER-BED DAMAGED, ETC.

The Tenant acknowledged that she did not have tenant insurance to cover the cost of her losses and she did not make any effort to wash or dry clean her clothes because she was too busy with school. Accordingly, I find there to be insufficient evidence to prove the Tenant took steps to mitigate her loss.

Conclusion

Based on the foregoing I find the Tenant provided insufficient evidence to meet the test for damage or loss. Therefore, I HEREBY DISMISS the Tenant's application, 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*.

Dated: November 13, 2012.

Residential Tenancy Branch