



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR, MND, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; for a monetary Order for damage; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

The Landlord and the Tenant agree that the Agent for the Tenant, who is named as a Respondent in the Landlord's Application for Dispute Resolution, is not a Tenant. The Landlord's Application for Dispute Resolution has, therefore, been amended by removing the Agent for the Tenant from the Landlord's Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Landlord entitled to compensation for loss of revenue, for storage costs, and for damage to the rental unit; to retain the Tenant's security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution?

Is the Tenant entitled to compensation for damage to personal property?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on September 01, 2007; that the Tenant was required to pay monthly rent of \$625.00 by the first day of each month; that the Tenant paid a security deposit of \$312.50 on August 15, 2007; that a condition inspection report was completed at the beginning of the tenancy; that the tenancy agreement reminds the Tenant that she is responsible for having tenancy insurance; that the Tenant did not have tenant's insurance on May 08, 2012; that the parties signed a mutual agreement to end the tenancy on June 02, 2012; that the Landlord did not schedule a time to inspect the rental unit at the end of the tenancy; and that the Landlord returned the security deposit plus interest, of approximately \$318.00, on, or about, June 02, 2012.

The Landlord is seeking compensation, in the amount of \$625.00 for lost revenue for the month of June of 2012. The parties agree that no rent was paid for June. The Landlord was unable to explain why compensation for lost revenue for June should be awarded.

The Landlord is seeking compensation, in the amount of \$587.65, for damage to the carpet. The Landlord stated that the carpet was not stained at the start of the tenancy; that the carpet was wet at the end of the tenancy and he did not note any stains at that time; that when the carpets dried he noticed the carpet was stained; that he was unable to remove those stains; that the carpets were approximately ten years old; and that the carpets were replaced with vinyl flooring. The Landlord submitted a photograph of the stained carpet and an estimate to show the carpet can be replaced for \$587.65.

The Tenant stated that the carpet was not stained at the end of the tenancy and she does not know what caused the stains that can be seen in the photograph.

The Landlord is seeking compensation, in the amount of \$75.00, for damage to blinds. The Landlord and the Tenant agree that the mechanism for opening and closing the blinds was broken during this tenancy.

The Landlord is seeking compensation, in the amount of \$25.00, for a broken lock. The Landlord stated that the secondary lock at the base of the sliding glass door was broken during the tenancy. The Tenant stated that she never used the lock; that she does not know if it was working at the start of the tenancy; and that she did not break the lock.

The Landlord is seeking compensation, in the amount of \$894.59, for storage costs. The Landlord stated that his insurance company removed a dresser, a wardrobe, and some bedding belonging to the Tenant after her rental unit was flooded on May 08, 2012, for the purposes of determining if they were damaged. He stated that the property was returned to the Landlord sometime during the first week of June; that he informed the Tenant that the property could be returned to her; that the Tenant did not

make arrangements to pick up her property; and that he has been storing it in his garage since June of 2012. He based his claim on the cost of renting a small storage unit in a commercial complex.

The Tenant stated that she did not make arrangements to recover the property being stored by the Landlord as the Landlord had told her his insurance would replace her damaged items and she had already replaced those items. The Landlord and the Tenant agree that the property in the Landlord's possession was valued at approximately \$388.00 when it was new.

The Landlord and the Tenant agree that there was a flood in the rental unit on May 08, 2012 and that some of the Tenant's property was affected. The Tenant stated that she was told by the Landlord and the Landlord's wife that the flood was the result of the Landlord's mother leaving a tap running. The Landlord contends that the Tenant was never informed that his mother left a tap running and that the flood was not the result of a tap left running. He stated that he is not certain what caused the flood, other than it was a plumbing problem between the floor of his living accommodations and the ceiling of the rental unit.

The Landlord and the Tenant agree that the Tenant did not live in the rental unit after the flood and that she has been reimbursed for the days that she was not able to live in the rental unit.

The Tenant contends that the Landlord has breached his duty of care under the *Occupiers Liability Act*.

Analysis

The undisputed evidence is that the Landlord returned the security deposit paid by the Tenant, plus interest, on June 02, 2012. As the Landlord has already returned the security deposit I find that I am unable to authorize the Landlord to retain that deposit.

Section 67 of the *Residential Tenancy Act (Act)* authorizes me to order a landlord or a tenant to pay compensation to the other party only when the landlord or the tenant has suffered a loss as a result of the other party not complying with the *Act*, the *Residential Tenancy Regulation* or the tenancy agreement.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that this tenancy ended on June 02, 2012 in accordance with section 44(1)(c) of the *Act*, as the parties signed a mutual agreement to end the tenancy on this date. As

the tenancy ended in accordance with the *Act*, I find that the Landlord is not entitled to any compensation for lost revenue for any period after the tenancy ended. I therefore dismiss the Landlord's claim for loss of revenue.

I find that the Landlord submitted insufficient evidence to show that the Tenant stained the carpet in the rental unit. In reaching this conclusion I was influenced, in part, by the absence of evidence that disputes the Tenant's testimony that she did not stain the carpet. More importantly I was influenced by the undisputed testimony that there was a flood in the rental unit in May of 2012; that the rental unit sustained some damage; and that the damage was repaired by the Landlord's insurance company. I find it entirely possible that the carpet was stained directly or indirectly as a result of the flood or while the flood damage was being repaired. As the Landlord has failed to establish that the Tenant damaged the carpet, I dismiss the Landlord's application for compensation for replacing the carpet.

I find that the Landlord has submitted insufficient evidence to establish that the blinds were damaged due to the abuse or neglect of the Tenant. I find it entirely possible that the device used to open and close the blinds malfunctioned due to normal wear and tear, as will happen over time. As a Tenant is not obligated to repair damage that arises from normal wear and tear, I dismiss the Landlord's application for compensation for repairing the blinds.

I find that the Landlord has submitted insufficient evidence to establish that the secondary lock on the sliding glass door was functional at the start of the tenancy. In reaching this conclusion I was influenced, in part, by the absence of evidence, such as a condition inspection report, that clearly shows the lock was working at the start of the tenancy and, in part, by the Tenant's testimony that she did not use the lock, which causes me to conclude that she could not have broken the lock. As the Landlord has failed to establish that the lock was in good condition at the start of the tenancy, I cannot conclude that it was damaged during the tenancy. I therefore dismiss the Landlord's application for compensation for repairing/replacing the lock.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord was storing personal property belonging to the Tenant that was worth less than \$500.00 when it was new; and that the Tenant made no attempts to recover this property after being asked by the Landlord to pick it up.

In these particular circumstances, I find it would have been reasonable for the Landlord to assume the Tenant had abandoned the wardrobe, the dresser, and the bedding, given that she made no attempt to recover the property after being asked to do so. Section 25(2)(a) of the *Act* authorizes a landlord to dispose of property abandoned at a rental unit that has a market value of less than \$500.00. As the parties agree that the value of this property when it was new was less than \$500.00, I find that the Landlord had the right to dispose of the property. As the Landlord had the legal right to dispose of the property, I find that the Landlord is not entitled to compensation for the cost of

storing the property, as he should have mitigated his losses by disposing of the property.

I find that the Landlord's application has been without merit and I dismiss his application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Section 32 of the *Act* stipulates that a landlord has a duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law. Residential Tenancy Policy Guideline 16 suggests, in part, that where there is a breach of a statutory duty, claims must be made under the law of negligence. In all cases the applicant must show that the respondent breached the care owed to him or her and that the loss claimed was a foreseeable result of the wrong.

Where a rental unit is damaged by an unforeseen event, such as a flood, the Landlord has an obligation to repair the rental unit and residential property. Tenant's insurance generally covers damages or losses a tenant incurs as a result of an unforeseen event. Damage to a Tenant's property or other losses, other than the loss of use of the rental unit, are not the responsibility of the landlord unless the Landlord has been negligent in the duty owed to the Tenant.

I find that the Tenant has submitted insufficient evidence to show that the flood on May 08, 2012 was the result of the Landlord's negligence. Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party.

I specifically note that the Tenant has submitted insufficient evidence to establish that the flood was the result of a tap left running in the Landlord's living accommodations. In reaching this conclusion, I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that she was told the Landlord's mother left a tap running or that refutes the Landlord's testimony that his mother did not leave a tap running. Even if I were to accept that the Landlord's mother left a tap running, I would not conclude that this action was a breach of the Landlord's duty of care.

I find that the Landlord has also submitted insufficient evidence to establish the precise cause of the flood. I am convinced, however, that there is no evidence to show that the flood result from a lack of maintenance. I therefore find that the Tenant has not proven negligence on the part of the Landlord and that the Tenant is not entitled to compensation for damage to her personal possessions.

I specifically note that I do not have the authority to award compensation for losses arising from a breach of any legislation other than this Act, including the *Occupiers Liability Act*.

Conclusion

Neither party has established a monetary claim and a monetary Order has not been awarded.

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 07, 2012.

Residential Tenancy Branch