



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD

Preliminary Issues

Upon review of the Tenant's application she confirmed that she was not seeking compensation for emergency repairs she had completed to the rental property, rather she was seeking costs to replace and/or repair her personal possessions that were damaged in a flood which would fall under the section for money owed for compensation for damage or loss under the Act, regulation or tenancy agreement. Accordingly, I amended her application to remove the request for costs of emergency repairs, pursuant to section 64 of the Act.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for the return of their security deposit, the cost of emergency repairs, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

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 and respond to each other's testimony. 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 month to month tenancy that began on December 1, 2005. As per the tenancy agreement rent was payable on the 30h of each month and over time the rent became payable on the first of the month in the amount of \$875.00. The Tenant had requested additional cable services and made an agreement to pay for those services on a monthly basis. On October 30, 2005 the Tenant paid \$437.50 as the security deposit. This tenancy ended on July 18, 2012 when a water main broke and caused the basement suite to be flooded.

The Tenant advised that when the flood happened July 18, 2012, she was out of town. She had arranged for her son to stay at her rental unit and look after her cat during her absence. When he returned home that evening he found the unit filled with water. The Landlords told her son that they had planned to tell the Tenant upon her return that they were going to evict her so their mother could move into the unit; however, now that it was flooded she will have to find a new place sooner.

The Tenant confirmed that she did not have tenant's insurance. She stated that she assumed the Landlord's home insurance would cover her possessions. She argued that she was of the opinion that because the Landlords did not have anything written in her tenancy agreement that indicated she was required to have tenant insurance it would make the Landlords responsible for her possessions.

The Tenant stated that she was told by the Landlords that because she did not have tenant's contents insurance the restoration company would not touch her possessions. She was urged to arrange to have all of her possessions removed within twelve to twenty four hours so the restoration company could begin the emergency repairs to the property. She hired a moving company who picked up her possessions on July 21, 2012 and put them in storage. She arrived back in town on July 24, 2012 and met with the movers to find most of her possessions were soaking wet, moldy, and had to be thrown out.

The Tenant advised that she never met with the Landlords upon her return and she was never told that she could not move back in. She simply accepted that she had to move out. Her son assisted her in finding a new place which she began to occupy on August 1, 2012. She sent the Landlords a registered letter on August 29, 2012, advising of her forwarding address and requesting the return of her security deposit. The Landlords refused the registered mail, as supported by the photocopy of the envelope provided in her evidence.

The Tenant is seeking the return of double her security deposit (2 x \$437.50) plus interest, the return of ½ month's rent to compensation for July 19 – 31, 2012 when she did not occupy the unit (\$437.50), 1 month's rent as compensation for having to move out of the rental unit without notice (\$875.00), and compensation for the replacement cost of all of her possessions, for a total claim of \$25,000.00.

The Landlords confirmed that they did not speak with the Tenant upon her return. They acknowledged that they have not returned the security deposit, they do not have an order authorizing them to keep the deposit, and they do not have the Tenant's written permission to keep the deposit. They advised that they kept the deposit to cover their costs for removing debris and numerous possessions that were left behind in the rental unit after the Tenant's possessions were removed.

The Landlords dispute the Tenant's claim for half of July's rent because that money was also used to cover their costs of damage caused to the unit by the Tenant and for costs incurred when removing debris and furniture left behind after the flood.

The Landlords confirmed they had a casual conversation with the Tenant's son about their thoughts of moving their mother into the unit. They stated that they did not tell the Tenant of their plans earlier because they did not want to ruin her trip. They noted that they had not acted on that thought and simply mentioned it to her son so that they could plan for the future. No notice to end tenancy was issued and no one has been able to occupy the rental unit since the flood as the repairs are still ongoing. The Landlords advised that there have been numerous delays in completing the repairs as the insurance company and restoration company work out their differences. As of this date no floor has been installed and the toilet is still not hooked up.

The Landlords stated the situation created by the flood is unfortunate. They argued that the broken water main was not within their control and the damage was not created by their actions. They disputed the Tenants claim for the replacement cost of her possessions and argued that it was her responsibility to have insurance.

The Tenant submitted documentary evidence which included, among other things, copies of: a monetary order worksheet; registered mail receipts and envelopes; pictures of the flood; travel information, worksheets; invoices, damaged property lists; and photos.

The Landlords submitted documentary evidence which included, among other things, copies of: the tenancy agreement; their written statement, and photos of the rental unit.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

The evidence supports that the tenancy ended July 18, 2012, as a result of a flood and the Tenant provided the Landlords with her forwarding address by registered mail on August 29, 2012. Refusal of registered mail does not negate or avoid service; therefore, I find the Landlords are deemed to have received the forwarding address five days after it was mailed on September 3, 2012, pursuant to section 90 of the Act.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit.

In this case the Landlords were required to return the Tenant's security deposit in full or file for dispute resolution no later than September 18, 2012. The Landlords did neither.

Based on the above, I find that the Landlords have failed to comply with Section 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit.

Based on the foregoing I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve her claim for the return of double the security deposit plus interest in the amount of **\$890.48** (2 x \$437.50 + \$15.48 interest).

In cases where rent is paid in advance of the month, for example rent for July is due on or before the 1st of July, if the tenancy were to end due to destruction of the rental property then the landlord would be entitled to retain the rent paid up to the date the

rental unit was occupied and the tenant would be entitled to restitution or the return of the rent that was paid for the period when the tenant could no longer occupy the unit.

Based on the aforementioned I find the Tenant is entitled to the return of rent paid in advance for the period of July 19, 2012 to July 31, 2012 in the amount of **\$437.50**.

The Tenant has sought compensation equal to one month's rent because her tenancy ended and because she was told the Landlords mother was moving in to the rental unit. Upon review of the evidence before me I find there to be insufficient evidence to prove the tenancy ended for any other reason other than the unit was flooded. While there were conversations about possibly ending the tenancy, there was no notice issued to terminate the tenancy. Therefore, I dismiss the Tenant's claim for compensation equal to one month's rent.

I accept that the Tenant suffered a major loss and severe damage to her possessions as a result of the July 18, 2012 flood. That being said there is no evidence to prove the Landlords were in breach of the Act or were negligent in a manner that caused the flood to occur. Notwithstanding the Tenant's argument that the Landlords did not request, in writing, that she carry tenant's insurance coverage, I find the onus lies with the Tenant to do what is reasonable to protect herself from loss, which in this case would have been to have content insurance. Based on the foregoing I find there to be insufficient evidence to meet the burden of proof and I dismiss the Tenant's claim of \$22,797.02 for damages and loss of her possessions; without leave to reapply.

Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$1,327.98**. This Order is legally binding and must be served upon the Landlords.

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: December 11, 2012.

Residential Tenancy Branch