



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, ERP, RP, LRE, FF

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss, an order for the Landlord to comply with the Act, Regulations or Tenancy Agreement, an order for emergency repairs, an order to make repairs, an order to control the Landlord's right to enter and recovery of the filing fee.

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

At the beginning of the hearing it was clarified with both parties that the Tenant is seeking a monetary order for the loss of quiet enjoyment for \$3,500.00, an order for the Landlord to replace the living room carpet, fix the stove (electrical problems), replace the bathroom shower surround and repair a leak behind the shower knobs and have the Landlord give proper notice to enter the rental unit. The Landlord states that she is in the process of scheduling the carpet replacement and will send a licensed technician to assess and repair the stove as needed. The Landlord has agreed to provide a copy of the licensed technician's assessment of the stove to the Tenant. The Landlord has also agreed to send a licensed plumber to assess and repair the bathroom shower leak. The Landlord has also agreed to avoid any further misunderstandings that written notices for entry shall be posted in compliance with the Act in the future.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order for the loss of quiet enjoyment?

Background and Evidence

The Tenant seeks a monetary claim of \$3,500.00 for the loss of quiet enjoyment. The Tenant claims that the Landlord is negligent by keeping the Tenants in an unhealthy/unsafe environment in the rental unit. The Tenant states that a flood

occurred on August 1, 2012 in which the Landlord failed to attend and clean up the water damage. The Landlord disputes this stating that the building manager did attend and was told by the Tenant that there were no issues. The Tenant disputes this stating that the Landlord agreed to compensate the Tenant for her personal time to clean up the water damage. The Landlord disputes this stating that the building manager attended and did not notice any damage. The Landlord refers to the photographs submitted showing only a circular stain where the water leak occurred. The Tenant has provided a Doctor's note dated 13/11/12 which states, "Above named patients apartment was flooded. She lives with her son who has asthma. There is a potential that his asthma can get worse because of smell/mold."

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.

I find that the Tenant has failed to provide sufficient evidence to satisfy me that there has been a loss of quiet enjoyment. However the Tenant has demonstrated that there has been an extended delay by the Landlord to effect proper repairs in a timely manner. The Landlord has not disputed these delays. The Tenant has not established the monetary claim sought, but is entitled to a nominal award for her inconvenience. I grant the Tenant a nominal award of \$100.00. The Tenant may withhold \$100.00 one-time from the next months rent due upon receipt of this decision.

The Landlord has agreed to the living room carpet replacement and will send a licensed technician to assess and repair the stove as needed. The Landlord has agreed to provide a copy of the licensed technician's assessment of the stove. The Landlord has also agreed to send a licensed plumber to assess and repair the bathroom shower leak. The Landlord has also agreed to avoid any further misunderstandings that written notices for entry shall be posted in compliance with the Act in the future. As the Landlord has agreed to comply with the above matters sought by the Tenant, no order is necessary.

The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant has established a total monetary claim of \$150.00.

Conclusion

The Tenant may withhold \$150.00 one-time from the next months rent upon receipt of this decision.

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: January 28, 2013

Residential Tenancy Branch

