



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for return of the security deposit, for compensation for damage or loss under the Act and to recover the filing fee for the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this decision.

Preliminary Issue

At the onset of the hearing the tenants stated the security deposit and pet deposit have been returned and they are no longer proceeding with that portion of their application.

Issue to be Decided

Are the tenants' entitled to monetary compensation for damage under the Act?

Background and Evidence

The parties entered into a fixed term tenancy which began on February 15, 2012 and was to expire on February 14, 2013. Rent in the amount of \$2,000.00 was payable on the first of each month. A security deposit of \$1,000.00 and a pet deposit of \$200.00 were paid by the tenants. On November 7, 2012, the parties by mutual agreement ended the tenancy effective November 14, 2012. Filed in evidence is a copy of the tenancy agreement and the agreement to end tenancy.

The tenants claim as follows:

| | | |
|----|-----------------------------|--------------------|
| a. | Musical Instrument | \$ 2,670.00 |
| b. | Labour and lost wages | \$ 1,635.00 |
| c. | Food cost | \$ 296.00 |
| d. | Electricity for restoration | \$ 77.00 |
| e. | Moving expenses | \$ 109.20 |
| f. | Alternative living expenses | \$ 547.00 |
| g. | Filing fee | \$ 50.00 |
| | Total claimed | \$ 5,275.44 |

The tenant (HB) testified the landlord was neglectful by not having the roof repaired when first notified by them on October 22, 2012, as there was a small amount of water dripping from a beam in the basement.

The landlord testified on October 23, 2013, he went to the unit to investigate and inspection the water in the basement, no water was seen dripping at that time.

The landlord testified that the roof is a tar and gravel roof, which has a useful life span of 25 to 30 years and at the time of the flood the roof was only 15 years old. The landlord stated he called a roofing company and left a message, but due to torrential rains that had occurred in the preceding 11 days, roofers were extremely busy.

The landlord testified they were having trouble reaching the tenants and on October 25, 2012, he went to the tenant's (HB) place of work and arrange with her a date and time for the roofer to attend the rental property and the date that was agreed to was October 28, 2012.

The landlord testified the flood occurred in the rental unit on October 28, 2012, when the water was being removed from roof, and water entered the main bedroom, hallway and water had entered through the return air duct into the east corner of the basement. The landlord stated the roofer was able to determine where the leak was and made the necessary repair.

The landlord testified the restoration company arrived at the property at 3:30 pm on October 28, 2012, and the water was vacuumed up and fans were in placed to dry the carpet. The landlord stated by November 2, 2012 all areas were dry and no further leaks in the roof were detected.

Musical Instrument

The tenant (DT) testified that on October 28, 2012, he woke up to water leaking from the ceiling into his bedroom. The tenant stated the landlords were on the roof removing the water and as the water was removed, water poured into the hallway, basement and his bedroom. The tenant stated they removed all the articles from his room. The tenant

stated he kept his musical equipment stored in the basement and the water and the humidity caused damage to his equipment.

The tenant (HB) testified there is no insurance available to tenants for flooding when the flood is caused by a leaking roof.

The landlord testified the tenants were aware of the water that was dripping into the basement and he informed the tenants that if they had any concerns regarding their musical equipment they should remove it from that area or at least cover it with a tarp which he provided to the tenants. The landlord stated the tenants refused to use the tarp and they failed to move the equipment and because of their neglect he should not be held responsible for any loss.

The landlord testified the tenants were also required to have proper insurance on their belongings, which is noted in the tenancy agreement and the agreement also states the landlord is not responsible for personal possessions. The landlord stated there were no issues with his insurance company covering his claim.

Labour and lost wages

The tenant (DT) testified that he has no evidence to support the claim for loss of wages as he recently started a new job.

Food cost

The tenants write in their application they are seeking to recover the cost of food in the amount of \$296.00.

Electricity for restoration

The tenants write in their application they are seeking to recover \$77.00 in electric costs.

Moving expenses

The tenants write in their application they are seeking to recover \$109.20 in moving expenses.

Alternative Living Expenses

The tenants testified they are seeking compensation for the first two weeks of November for alternative living expenses in the amount of \$547.00.

The landlord testified the only unusable portion of the premises was the main bedroom. The landlord stated the tenants have been adequately compensated for any loss as they did not pay any rent for November 2012, as required by the tenancy agreement and

were still residing in the unit until November 14, 2012, when the tenancy ended by mutual agreement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the tenants have the burden of proof to prove.

The parties agreed that on October 28, 2012, there was flooding in the rental unit and the main areas affected were the basement, hallway and one of the bedrooms.

On October 22, 2012, the landlord was notified by the tenants that there was water dripping off a beam in the basement. On October 23, 2012, the landlord attended the premises and inspected the basement and the roofing company was called. The evidence of the landlord was that he was unable to reach any of the tenants to arrange a time the roofer could attend the rental property and on October 25, 2012, he went to the tenant's (HB) place of work and a date of October 28, 2012, was arranged.

Under the Act, the landlord once notified that a problem exist is allowed reasonable time to make repairs. I find the landlords did take reasonable steps to have the roof repaired.

Also, the flooding incident occurred on October 28, 2012, when the roof was being prepared for the required repair to take place. I find the tenants have failed to prove the landlords have violated the Act.

Musical Instruments

As I have previously found the landlords have not violated the Act, I find the landlords are not responsible for repairs or replacing of the tenants' personal belongings.

The evidence of tenant (HB) was they called the landlord on October 22, 2012, due to water leaking into the basement from a beam. The evidence of the landlord was he informed the tenants if they were concerned about their equipment they should move it. The evidence of the landlord was he provided the tenants with a tarp and they refused to use it. I find the tenant failed to take reasonable steps to protect their belongings, when they failed to move their equipment from the basement when they first discovered the water leak and when they refused to use the tarp provided by the landlord.

Further, the tenants were required to have insurance on their belonging as agreed in the tenancy agreement. That agreement also states the landlord is not responsible for the tenants' personal belongings. The landlord is not the tenants' insurer when inadequately insured or when the tenants fail to take reasonable steps to protect those belongings.

Due to above, I find the tenants have failed to prove this portion of their claim. Therefore, I dismiss the tenants' application for any damages to the musical equipment.

Labour and lost wages

As I have previously found the landlords have not violated the Act, I find the landlords are not responsible for paying labour and loss of wages to the tenants.

Further, the evidence of the tenant (DT) was they have no evidence to support this portion of their claim. Therefore, I dismiss the tenants' application for loss of wages.

Food cost

As I have previously found the landlords have not violated the Act, I find the landlords are not responsible for paying the cost of food for the tenants.

Further, the kitchen area of the premises was not affected by the flood. Therefore, I dismiss the tenants' application for the cost of food.

Electricity for restoration

The tenants write in their application they are seeking to recover the cost of the hydro used during the restoration.

While the tenants may be entitled to recover a portion of the cost of extra hydro used by the landlord during the restoration period, the tenants did not provide any testimony or

documentary evidence to support this claim. I find the tenants have provided insufficient evidence to support this portion of their claim. Therefore, I dismiss the tenants' application for the cost of electricity.

Moving expenses

As I have previously found the landlords have not violated the Act, I find the landlords are not responsible for paying moving cost.

Further, on November 7, 2012 the parties mutually agreed to end the tenancy effective November 14, 2012. I find the tenant were required to pay their own moving expenses. Therefore, I dismiss the tenants' application for moving expenses.

Alternative Living Expenses

In this case, the tenants are claiming alternative living expenses for the first two weeks of November for accommodations rented elsewhere.

Under the Act the tenants may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every reasonable effort to minimize the disruption.

However, two of the three tenants remained in the rental unit November 14, 2012, and the only room that was not useable was the main bedroom. No rent was paid by the tenants for November as required by the tenancy agreement.

Therefore, I find the tenants were adequately compensated for any loss of use of the property. I dismiss the tenants' application for compensation for alternative living expenses.

Conclusion

The tenants' application is dismissed.

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 23, 2013

Residential Tenancy Branch

