



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss and an order for the Landlord to make emergency repairs for health or safety concerns.

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

At the beginning of the hearing both parties have clarified that the Tenant has vacated the rental unit as of February 4, 2013. The Tenant has withdrawn the request for emergency repairs. As such, no further action is required for this portion of the application. As well both parties have consented to the Tenant providing her new forwarding address to update the Tenant's Application.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

The Tenant has amended her application during the hearing to reflect the payments made to her by the Landlord to \$150.00 for the remaining portion of the rent to be returned for January 17 to 31, 2013. The Tenant also seeks \$200.00 for the loss of quiet enjoyment because of health concerns.

Both parties agreed that the Tenant gave a 1 month written notice on January 28, 2013 to vacate the rental unit. The Tenant vacated the unit on February 4, 2013. The Tenant states that she suffers from asthma and was advised to vacate the rental unit by the restoration company and her Doctor. The Landlord disputes this stating that after the

unit was disinfected that it was habitable. The Landlord states that the only issue was the replacement of the laminate floor that was removed. The Tenant disputes that she was told verbally by the restoration company to not live in the unit. The Landlord states that they just received a letter from the restoration company that confirms this.

I find that this letter is material evidence as to the state of the rental and have granted the Landlord with permission to submit this documentary evidence by fax within 24 hours of the hearing time. This letter if received will form part of the decision making process.

The Landlords have complied by faxing in the letter within 1 hour of the end of the hearing. This letter from the restoration company states, "Rocksteady restorations have completed emergency work in units C&D....We did a three step disinfection. This includes removing any contaminated materials and a high level disinfection to sterilization activities in which all microbial life, including spores and viruses are destroyed....Unit C was the least affected and we made sure was safe to be occuppies."

Both parties agreed that a sewage backup caused damage to floor in the rental unit on January 17, 2013. The Landlord was notified the same date and a clean-up crew attended and cleaned all of the affected areas in the bathroom and part of the living room in this 1 bedroom unit. The Landlord states that a restoration company attended the same date and removed the laminate flooring. The Tenant stated in her testimony that she was advised by this crew to vacate the premises as they are not habitable. The Landlord has disputed this stating that they have a written letter from the restoration company stating that after the cleaning and removal of flooring by the restoration company that the rental unit was fit for occupation.

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.

The Tenant has failed provide sufficient evidence to satisfy me of her claim. The letter from the restoration company is in direct conflict with the Tenant's direct testimony. I

find on a balance of probabilities based upon the evidence of the Landlord that all reasonable steps were made to rectify the situation. The Tenant suffered only a temporary discomfort for which the Landlord responded to within a reasonable amount of time to rectify the flood. The Landlord has already compensated the Tenant by returning \$147.00 of the monthly rent. The Tenant's Application for a monetary order is dismissed.

Conclusion

The Tenant's Application is dismissed 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: February 26, 2013

Residential Tenancy Branch

