



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Code: MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation for loss under the Act, and to recover the filing fee from the landlord.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to a monetary compensation for loss under the Act?
Is the tenant entitled to recover the cost of filing an application?

Background and Evidence

The tenancy began on November, 1, 2012. Rent in the amount of \$825.00 was payable on the first of each month. A security deposit of \$412.50 was paid by the tenant. The tenancy ended on November 30, 2012.

The parties agreed a move-in and move-out condition inspection report was completed.

The tenant claims as follows:

a.	November rent	\$ 825.00
b.	Moving expenses	\$ 262.50
c.	Hydro – hookup	\$ 13.67
d.	Cleaning	\$ 160.00

e.	Loss of food	\$ 43.86
f.	Filing fee	\$ 50.00
	Total claimed	\$ 1,305.03

November rent and moving costs

The tenant testified due to the uninhabitable conditions of the rental unit that she seeks to have her rent for November 2012, returned and to be reimbursed for all cost associated with moving to and from the rental unit. Filed in evidence are what is alleged to be moving receipts.

The tenant testified that she previewed the rental unit, and as she only spent a very short time in unit did not notice that it was in such poor condition. The tenant stated when she took possession of the unit, it was dirty, and there was mould in the bathroom and around the window casing, which made the unit uninhabitable. The tenant stated that the condensation on the windows was excessive and the smell of the building was very musty. The tenant stated that during the month she resided in the unit, there was very heavy rains, which did not help the condensation problem. Filed in evidence are photographs of the bathroom and pictures of the windows.

The landlord testified that the parties previewed the unit together and they agreed that one wall and several window sills required to be painted, which were completed prior to the tenant taking possession. The landlord stated there was no further request for repairs by made the tenant.

The landlord testified that unit complies with the health and safety standards required by the Act. The landlord stated the building is 50 years old and the windows are steel framed and single pane, which condensation can build easily with the right conditions.

The landlord disputed that the unit was not uninhabitable due to mould. The landlord stated the tenant's photographs of the bathroom wall merely show dirt. The landlord stated the tenant remained in the unit for the full month of November 2012, and is not entitled to the return of the rent.

The landlord testified the tenant was no happy living in the building and he agreed for her to vacate the unit at the end of November 2012, although she did not provide the proper one month notice as required by the Act. The landlord stated the rental unit was re-rent and there have been no complaints from the new tenant.

The landlord stated he is not responsible for any moving costs.

Cleaning

The tenant testified that she spent eight hours cleaning the unit at the start of the tenancy and seeks \$160.00 for compensation. The tenant stated the landlord did provide her with partial compensation in the amount of \$86.00 and seeks to recover the difference between the two amounts.

The landlord testified that there were very minor items to be cleaned in the rental unit and at most it would have taken two hours to clean, as this unit is a bachelor unit. The landlord stated he provided the tenant with compensation for cleaning in the amount of \$86.00, not because he felt it was justified, but to keep the peace.

Hydro – hookup

The tenant testified that she is seeking to recover the cost of the hydro hookup fee. The tenant acknowledged she is responsible for the cost of the hydro consumption for the month of November 2012. The tenant seeks to recover the amount of \$13.67. Filed in evidence is a copy of the hydro invoice.

Loss of food

The tenant testified that the refrigerator was not working for the full month of November and she lost food. The tenant stated the landlord did provide compensation for her loss of food in the amount of \$43.86, which receipts were provided. The tenant stated she seeks further compensation for loss of food in the amount of \$43.86, however, does not have any receipt to support the additional loss of food.

The landlord testified when the tenant took possession of the rental unit she informed them that the refrigerator was noisy and may not be working correctly and as a result of that complaint, an appliance repair person was called and attend the same day. The landlord stated the appliance was repair. Filed in evidence is an invoice of repair dated November 1, 2012.

The landlord testified that the tenant was compensated for loss of food in the amount of \$43.86, and there were no further complaints regarding the appliance not functioning properly.

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, that is, a balance of probabilities.

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 tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

November rent and moving costs

In this case, the tenant is seeking the return of November 2012, rent and moving costs. The tenant alleged that the unit was uninhabitable due to mould. The landlord denied the allegation and claims it was merely dirt on the bathroom wall. The photographs submitted by the tenant show there is something on the bathroom wall, however, this could simply be dirt or mildew.

The tenant has not submitted any report from a mould expert to prove that this was black toxic mould. Further, I find the action of the tenant to be inconsistent with her testimony as she alleged the unit was uninhabitable, yet remained in the unit for the full month of November, 2012, until the tenancy ended by mutual agreement. As a result, I find the tenant has failed to prove a loss exists or a violation of the Act by the landlord. Therefore, I dismiss this portion of the tenant's claim.

The tenant is seeking moving costs. The tenant previewed the unit and made the chose to hire a company to move her belongings to the rental unit. The tenant was not happy with the rental accommodation and the parties agreed to end the tenancy by mutual agreement. As a result, I find the tenant has failed to prove a violation of the Act by the landlord. Therefore, I dismiss this portion of the tenant's claim.

Loss of food

In this case, the tenant testified that the refrigerator did not work for the month of November 2012. The parties agreed that the landlord provided the tenant with

compensation for loss of food in the amount of \$43.86, as a result of the refrigerator not working on November 1, 2012.

The evidence of the landlord was the appliance was repaired on November 1, 2012, and copy of the invoice for repair was submitted as evidence by the landlord to support their position. This was not disputed by the tenant.

On November 18, 2012, the tenant provided a letter to the landlord, in the letter the tenant writes,

“This is further to my letter and conversation with you and (name) on November 1, 2012,I am requesting reimbursement for the following: Loss of food (due to the fridge not working Nov. 1/12): 43.86 (receipts attached)”

[Reproduced as written.]

The tenant seeks further compensation for loss of food. However, there is no suggestion in the letter dated November 18, 2012, that the appliance was not functioning properly as alleged after November 1, 2012.

I find if the refrigerator was not working when the letter of November 18, 2012, was written by the tenant, it would have been reasonable for the tenant to inform the landlord that the problem continued to exist and that she suffered further loss of food. As a result, I find the tenant has failed to prove the appliance was not working after the repair was made and sustained a further loss of food. Therefore, I dismiss this portion of the tenant's claim.

Hydro hookup

In this case, the tenant is requesting to recover the cost of the hydro hookup fee. However, the hydro invoice submitted by the tenant to support her claim, does not support that the tenant paid a hydro hookup fee. The invoice indicated that the actual charge was for the consumed electricity used by the tenant and that amount was \$13.67. The tenant acknowledged in her testimony that she was responsible for the cost of the hydro consumption. I find the tenant has failed to prove a loss exists or a violation of the Act by the landlord. Therefore, I dismiss this portion of the tenant's claim.

Cleaning

The tenant testified that due to the condition of the rental unit she spent 8 hours cleaning and seeks compensation. The evidence of the landlord was that there was minor cleaning to be done to the unit and it would not require eight hours to clean the bachelor unit. The evidence of the landlord was that although he did not feel that there was more than two hours of work he compensated the tenant by giving her \$86.00.

In this case, the condition inspection report at the move-in indicated some cleaning was required. The tenant was compensated by the landlord in the amount of \$86.00, and this amount would represent approximately four and a half hours of cleaning time at the rate of \$20.00 per hour. The tenant has provided no documentary evidence to support her claim, such as photograph of the entire bachelor unit, for me to determine that \$86.00 was not reasonable compensation. As a result, I find the tenant has provided insufficient evidence to support her claim for further cleaning costs. Therefore, I dismiss this portion of the tenant's claim.

In light of the above findings, the tenant's application is dismissed without leave to reapply. The tenant is not entitled to recover the cost of filing the application from the landlord.

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: April 17, 2013

Residential Tenancy Branch