



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Amber Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, O

Introduction

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss and for the return of all or part of the security deposit.

Both parties attended the hearing by conference call and gave testimony. The Landlord has confirmed receipt of the Tenant's notice of hearing package, but states that there were no photographs provided. The Tenant states that she provided the notice of hearing package and photographs to an agent of the Landlord at another of the Landlord's buildings in person. The Tenant, D.S. stated that the package was delivered in February of 2013. The Landlord states that the only evidence missing is the photographs. The Tenant has confirmed receipt of the Landlord's evidence package. As both parties have attended and have confirmed receipt of the notice of hearing package I am satisfied that both parties have been properly served as such. As for the missing photographs, the Tenant states that the photographs depict the state of the rental unit shortly after the flooding. As the Landlord has confirmed that there was a flood from a burst pipe from another rental unit directly above, I accept the photographs submitted by the Tenant as I find that there is no prejudice to the Landlord as there is no dispute that a flood took place or that there was repairs completed shortly after.

The Landlord states that the address provided on the Tenant's application incorrect and should be amended for unit #302 for the same address as the dispute location. The Tenant offered no explanation as to why the Landlord was served at an alternate address. The Tenant's Application shall be amended to reflect the proper address of the Landlord.

During the hearing, the Tenant withdrew the portion of the monetary claim for the return of the security deposit. The Tenant, K.S. confirmed that the security deposit was returned by the Landlord, but that he was seeking outstanding interest for the security deposit. The Tenant, D.S. confirmed that \$1.31 was returned by the Landlord. The Tenant, K.S. was unable to provide any details of what the missing portion of the interest would be and as such has withdrawn this portion of the claim.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background and Evidence

This Tenancy began on October 1, 2008 on a fixed term tenancy ending on September 30, 2009 as shown by the copy of the submitted signed tenancy agreement. The Tenancy ended by mutual agreement on September 30, 2012. The monthly rent was \$700.00 payable on the last day of each month and a \$350.00 security deposit was paid. The monthly rental rate at the end of the tenancy was \$781.34 as per the copy of the notice of rent increase dated November 24, 2011, effective on March 1, 2012.

The Tenant seeks a monetary claim of \$1,173.03. This consists of 14 hours of (personal) cleaning for \$140.00 at \$10.00 per hour, \$265.95 for the loss of use of the rental unit for 5 days (@\$25.19 per day), \$20.44 for the excessive utility charges for power used by contractors during flood repairs, \$25.00 for laundry costs to clean dirty items caused by flooding, \$15.00 for damages/ loss of personal items from the flooding/theft by contractors, \$15.00 for the replacement of a damaged door mat and lamp shade caused by flooding, ornaments (various items totalling \$93.00), \$60.00 for the repair of a scratched piano, \$138.60 for the loss of 50% use of the rental unit for 11 days (@\$12.50 per day), \$80.00 for carpet cleaning after flooding and \$475.04 for storage of items from flooding. The Tenants state that they suffered property damage and the loss of use of the rental unit due to the neglect of the Landlord from a flood on July 14, 2012. The Tenant relies on previous outcomes of dispute resolution to show that the Landlord's were negligent. The Tenants provided two files numbers in support showing prior water damages, poor repairs and the state of the rental property. The Tenants state that because of these the Tenants were unable to obtain owners insurance for the contents of their rental unit. This resulted in property damage and losses of the Tenant's possessions.

The Landlord disputes the Tenant's claims and states that the building was old and that the previous flooding originated from the roof and that this burst pipe from the unit above was a separate issue. The Landlord states that they responded promptly to the flood with fans and a remediation company to dry and repair the damaged areas. The Landlord states that this was confined to the kitchen/dining room and part of a hallway. The Landlord has provided a letter from the contractor which states that, "Our policy is to cover the areas affected with plastic sheeting or fabric sheeting and to cleanup after the work is done. As well, we do not use any tenants electrical outlets for power usage. If power is needed we use an extension cord and take power from the building. The

apartment was covered, protected and cleaned properly.” The letter dated May 13, 2013 states that the work done by the contractor was on July 14, 2012.

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.

The Tenant has failed to provide sufficient evidence that damage occurred through the negligence of the Landlord. The Tenants claim is disputed and has not provided any details of negligence on the part of the Landlord. The flooding took place on July 14, 2012 and the contractors letter shows that they attended on the same date as well as providing details that the rental unit was, “The apartment was covered, protected and cleaned properly”. The Tenant has also failed to provide proof of an actual amount required for compensation for the claimed losses. No receipts/invoices or any details of the damaged items were provided. I find on this basis that the Tenants have failed in their monetary claim and it 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: May 24, 2013

Residential Tenancy Branch

