



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF, MNR

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order for damage to the unit, site or property and for money owed or compensation for damage or loss suffered under the Act, the regulation or the tenancy agreement. The tenants are seeking a monetary order for money owed or compensation for damage or loss suffered under the Act, the regulation or the tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to a monetary order as claimed?

Background, Evidence

The tenancy began on April 4, 2013 and is ongoing. The tenants were obligated to pay \$1950.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$975.00 security deposit.

The tenants gave the following testimony:

The tenants stated that on the day of move in, they were verbally informed by the building manager that there was an ongoing water leak in their bathroom and “the men will come tomorrow to fix it”. The tenants stated that workmen came and went on a fairly regular basis from that point until May 5, 2013. The tenants stated that they had to deal with a flood in their bathroom from the very first day of their tenancy and feel that the landlord has breached section 27 and 32 of the Act. The tenants also stated that when the second flood occurred, they became aware of “black mould” in the walls. The tenants stated they had to shower in the gym of the building for almost two weeks. The tenants feel that they are entitled to the equivalent of two months’ rent as they have been inconvenienced and for having been exposed to mould.

The landlord gave the following testimony:

The landlord stated that the tenants are the cause for the two floods. The building was built in 1965 but has not had any issues. The landlord stated that the previous tenant and he conducted a move out inspection report and all items in the unit were working perfectly. The landlord stated that all repairs were done in a timely fashion and by qualified workers. The landlord stated that the insurance company will not cover the costs of the repairs as it was the tenants' negligence that caused the damage. The landlord stated that his costs incurred are \$10, 698.87 and he seeks a monetary order in that amount.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, both parties must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

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.

Both parties have made an application for a monetary order however both parties failed to meet the criteria as listed above, specifically # 2. Both parties made allegations that the other was responsible for the flood but had insufficient evidence to support those allegations. The parties were in agreement to much of the facts of the incident except that of responsibility and liability. The tenants made claims about mould exposure but provided little evidence to support that claim. The tenants fail to provide sufficient evidence showing that the landlord had neglected his property or that it was in a poor state of repair. I find that the landlord acted in accordance with the Act and in a reasonable time frame.

The landlord failed to show that it was the tenants that were the cause of the two floods. The first flood on April 4, 2013 was due to a crack in the toilet bowl that was never conclusively proven that the tenants were responsible for. The toilet was repaired by the plumbing company. The landlord is relying on a letter sent by the principal of the plumbing company giving his opinion that the tenants were responsible for the flood. The plumber did not give testimony for this hearing. I accept the plumber is qualified however the letter was in direct contradiction to the landlords' testimony. The landlord stated that the flooring in the bathroom was solid concrete and tile, and that the floor did not need any repair or replacement. The plumbers' letter stated that water was soaking through the floor down into the suite below. The tenants adamantly disputed the plumbers claim that they were responsible for the flood. On April 27, 2013, inquiries were made about the toilet leaking into the unit below once again. In the landlords own documentation it states the toilet is new and that the shower has been dismantled. The landlord stated in an e-mail dated April 29, 2013 that the tenants were not using the shower.

The landlord stated that the second flood occurred on April 27, 2013 yet his own documentation shows that the renovation company was conducting repairs from April 26-29 and that the shower was not in service. This raises questions as to the accuracy of the plumbers report on the tenants' misuse of water and they being the cause of the flood. The landlord stated the insurance company would not cover the costs of repairs due to the tenants neglect. The landlord did not provide evidence from the authorized claims adjuster from the insurance company corroborating that claim. These examples along with several other inconsistencies and contradictions ask more questions than it answers.

I accept that a flood occurred in the unit as the parties have stated. I also accept that the landlord mitigated and repaired the plumbing issues as quickly as possible. I do not accept either parties claim that the other was responsible for this occurring. I acknowledge it is rare to have two applications and to have neither successful, but based on all of the above, the evidence provided by both parties and on the balance of probabilities, I must dismiss both applications in their entirety.

As neither party has been successful in their applications, each party must bear the cost of the filing fee.

Conclusion

I dismiss the tenants' application in its entirety.

I dismiss the landlords' application in its entirety.

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: August 20, 2013

Residential Tenancy Branch