



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, LRE, FF

Introduction

This hearing was scheduled to deal with a tenant's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; for Orders for the landlord to comply with the Act, regulations or tenancy agreement; and; Orders setting conditions or restrictions on the landlord right to enter the unit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord confirmed receiving the tenant's Application for Dispute Resolution but claimed that he did not receive the tenant's evidence package. The tenant's advocate testified that she affixed the tenant's evidence package to the landlord's door on November 5, 2013 as attempts to meet with the landlord in person were unsuccessful. The advocate indicated she could call a witness to confirm service of the documents if necessary. The landlord denied receiving any messages from the advocate or finding anything affixed to his door.

Rather than have the proceedings adjourned, the tenant stated that she wished to proceed with the hearing based upon the submissions made in the details of dispute on the Application for Dispute Resolution and oral testimony.

In making this decision, I have relied solely upon the submissions contained in the Application for Dispute Resolution and the oral testimony of both parties.

Both parties confirmed the tenant has since vacated the rental unit. As such, I find it unnecessary to further consider the tenant's requests for Orders for compliance or Orders for conditions to be set upon the landlord's right to enter the rental unit.

Issue(s) to be Decided

Has the tenant established an entitlement to receive compensation from the landlord for loss of use of the rental unit and damage to her personal property?

Background and Evidence

The one-year fixed term tenancy commenced on January 15, 2012 and continued on a month to month basis upon the expiration of the fixed term. The tenant was required to pay rent of \$650.0 on the 1st day of every month. .

It was undisputed that in August 2013 the tenant paid rent in advance for the month of September 2013. On August 31, 2013 sewage backed up into the rental unit and other units located on the ground floor of the residential property.

As a result of the sewage back up, flooring and the portions of walls had to be removed, as well as the toilet. Without a toilet and remediation efforts underway, the unit was essentially uninhabitable. The landlord offered for the tenant to stay at his personal residence but the tenant decided to stay with her father.

The toilet was reinstalled on September 27, 2013; however, the tenant did not want to stay at the rental unit as the flooring had not been replaced and remediation work was still on-going.

It was undisputed that the tenant did not pay rent for October 2013. The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant did not file to dispute the 10 Day Notice and moved out of the rental unit on October 15, 2013.

The tenant seeks compensation of \$650.00 for the rent she paid for the month of September 2013. The tenant also seeks compensation for ruined clothing and furniture cleaning. The tenant acknowledged that she did not carry tenant's insurance.

The landlord objected to paying the tenant compensation for September 2013 because she did not pay rent for October 2013. The landlord was of the position that the toilet was useable starting September 27, 2013 and the tenant could have moved back into the unit as of that date. The landlord also pointed out that the tenancy agreement required the tenant to carry tenant's insurance. The landlord claimed that the tenant had confirmed she had insurance.

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the tenant's claims against the landlord.

Residential Tenancy Policy Guideline 16: *Claims in Damages* provides a policy statement with respect to claiming damages against the other party. As provided in the policy guideline, an Arbitrator may hear claims in tort and claims for breach of contract.

I was not presented any evidence to suggest the sewage back up was the result of negligence on part of the landlord. Further, as multiple units were affected by the sewage back up and a remediation company was called in to address the contamination, I am satisfied the landlord was not negligent in making necessary repairs. Therefore, I find there is not a claim in tort in these circumstances and I proceed to consider whether the tenant is entitled to compensation due to a breach of contract.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

In the circumstances described to me, I find there was a breach of contract by the landlord starting August 31, 2013 even though the breach was not the result of negligence on part of the landlord.

As the tenant is seeking recovery of rent paid for the month of September 2013 and the rental unit was essentially unliveable from August 31 – September 27, 2013 with limited use available after that, I grant the tenant's request for recovery of \$650.00. I make no further award with respect to recovery of the filing fee paid for this Application for Dispute Resolution as I find the tenant did receive some benefit from the use of the rental unit during the month of September 2013, even if that benefit was only storage for her personal property.

Although it was undisputed that the tenant did not pay rent for October 2013 I have not offset the non-payment of October 2013 rent against the above award as the landlord had not filed a claim against the tenant and I heard disputed testimony as to whether the tenant gave the landlord notice to end the tenancy. Nor, was I provided sufficient evidence as to the condition of the rental unit during the month of October 2013. Therefore, the landlord is at liberty to pursue the tenant for unpaid and/or loss of rent for subsequent months, as applicable, by filing his own Application for Dispute Resolution and providing evidence with respect to progress of the unit's remediation.

With respect to the tenant's request for compensation for damage to her personal property I dismiss this portion of her claim as I found the sewage back up and resulting damage to her personal property was not the result negligence on part of the landlord. Such losses would ordinarily be part of a claim under a tenant's insurance policy. The tenant's decision to not carry insurance on her personal property is a decision for which she must bear the cost.

Conclusion

The tenant has been provided a Monetary Order in the total amount of \$650.00 for loss of use of the rental unit during the month of September 2013 and recovery of the filing fee.

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: December 3, 2013

Residential Tenancy Branch

