



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant under the *Residential Tenancy Act* (the “Act”) for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fee.

The tenant, two agents for the landlord, (the “agents”), and a witness for the landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the relevant evidence is provided below and includes only that which is relevant to the matters before me.

The landlord confirmed that they did not submit evidence in response to the tenant’s application. The landlord agents confirmed that they received the first package of evidence from the tenant, but not the second package as discussed during the hearing. The agents confirmed that the landlord had the opportunity to review the tenant’s first evidence package and were comfortable proceeding without the second evidence package as a result.

Preliminary and Procedural Matter

At the outset of the hearing, the parties mutually agreed to remove the name of the landlord agent, EJ, as the landlord agent is no longer employed by the landlord, and the tenant is claiming against the landlord company. As a result, landlord agent EJ has been removed from the tenant’s application by mutual consent of the parties.

Issue to be Decided

- Has the tenant provided sufficient evidence to prove that she is entitled to compensation under the *Act*, regulation or tenancy agreement?

Background and Evidence

The parties agreed that a fixed term tenancy began on November 1, 2012 and was to revert to a month to month tenancy after December 31, 2013. The parties agreed that the tenant vacated the rental unit on August 31, 2013. The tenant paid a security deposit of \$337.50 at the start of the tenancy.

The tenant originally applied for \$1,731.00 however during the hearing, amended her application by reducing her claim to \$1,698.12 comprised of the following:

Item 1. Return of July and August 2013 rent (calculated at \$675.00 multiplied by two months)	\$1,350.00
Item 2. Loss of toiletries	\$30.00
Item 3. Laundry compensation	\$10.50
Item 4. Food	\$25.00
Item 5. Raid (pest spray)	\$24.87
Item 6. Exterminator cost	\$57.75
Item 7. Moving expenses	\$200.00
TOTAL	\$1,698.12

The tenant testified that she first noticed cockroaches in the rental unit on July 5, 2013 and notified the landlord on July 16, 2013. The landlord stated that on July 5, 2013 a pest control unit was at the rental unit and confirmed “no hits for cockroaches in the rental unit”. The parties disputed whether the tenant permitted entry to the rental unit on July 18, 2013. The landlord stated that the tenant denied entry to the rental unit for pest control contractors after a notice dated July 17, 2013 was posted to the tenant’s door indicating that the pest control contractors would be attending the rental unit on July 18, 2013. The tenant stated that she did allow access on July 18, 2013. According building manager, ZR, the tenant stated “I’m talking with [name of building manager] and am not allowing pest control in.”

The tenant also referred to a June 29, 2013 letter submitted in evidence where the tenant alleges that the “the law requires that you immediately repair and treat my suite

for water damage and mold prevention...". A landlord agent stated that they received the June 29, 2013 letter from the tenant, and that building manager ZR attended on June 25, 2013 at 9:00 p.m. by himself and extracted water from the carpet using a wet vacuum and that he asked the tenant whether she had a fan and the tenant replied that she did have a fan, which the tenant disputed. The tenant did not provide any photos to support that there was mould in the rental unit and did not present any witnesses or witness statements to support the existence of mould in the rental unit.

The tenant referred to a July 29, 2013 e-mail submitted in evidence where the tenant writes to the building manager that she has given her "30 days notice" and that she is sending an e-mail for the landlord's records. The landlord responded to the tenant's e-mail on August 2, 2013, which was submitted in evidence, where the agent for the landlord writes "Can you please clarify and specify the condition of our unit "uninhabitable and unsanitary living condition" I have spoken with building manager regarding your unit condition and is not aware of "uninhabitable and unsanitary living conditions".

The tenant referred to several photographs which the tenant stated showed cockroaches. The photos submitted in evidence were blurry and dark. The tenant confirmed during the hearing that she did not submit receipts for the toiletries, food, or laundry expenses. The tenant did submit a receipt for \$340.00 dated August 29, 2013 for moving costs, two receipts for Raid pest spray, and an exterminator receipt for \$57.75 in evidence. On the exterminator receipt dated August 3, 2013 for \$57.75, the contractor wrote "cockroaches have been found inside this unit...".

The landlord called witness GP, who is employed with a pest control company. Witness GP stated that he inspected the rental unit on July 5, 2013 and did not find cockroaches in the rental unit. The tenant and the agents did not pose any questions to witness GP during the hearing when given the opportunity.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did everything possible to minimize the damage or losses that were incurred.

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.

Items #1 to #7 of tenant's claim –The tenant has alleged that there was mould in the rental unit as a reason why she breached a fixed term tenancy and vacated early; however failed to provide evidence to support her testimony, such as photographs or witnesses of the alleged mould in the rental unit. Furthermore, the tenant claimed that the rental unit had cockroaches, yet provided blurry photos which I find were too blurry to prove what was being claimed. Furthermore, the landlord's witness, GP, testified that he did not find cockroaches in the rental unit on July 5, 2013 which was not disputed by the parties during the hearing. I find the exterminator invoice dated August 3, 2013 to be unclear, as it is not clear whether the exterminator wrote down what the tenant was alleging, or whether the exterminator personally witnessed cockroaches inside the rental unit on that date.

Based on the above, **I find** the tenant provided insufficient evidence to support any of the items she has claimed for in her application and that the tenant has failed to prove that the landlord breached the *Act*, regulation or tenancy agreement. Therefore, **I dismiss** tenant's claims in full due to insufficient evidence, without leave to reapply.

As the tenant's application did not have merit, I **do not** grant the tenant the recovery of the filing fee.

Conclusion

The tenant's application is dismissed in full due to insufficient evidence, without leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 17, 2013

Residential Tenancy Branch

