



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O

Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or the tenancy agreement. The tenant participated in the conference call hearing but the landlord(s) did not. The tenants presented evidence that the landlords were served with the application for dispute resolution and notice of hearing by registered mail on September 5, 2013. I found that the landlord had been properly served with notice of the landlord's claim and the date and time of the hearing and the hearing proceeded in their absence. The tenants gave affirmed evidence.

Issues to be Decided and Analysis

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The tenants gave the following undisputed testimony:

The tenancy began on or about August 1, 2013. Rent in the amount of \$1400.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$700.00. The tenants stated that they had a verbal agreement with the rental manager; that agreement was to have new carpets installed, the suite painted and the unit professionally cleaned. The tenants stated that none of those issues were addressed by the move in date. The tenants stated that the cleaning and carpet replacement was done by August 9, 2013. The tenants stated that they had severe allergies and that they were unable to sleep in one bedroom. The tenants stated that they found the unit to be filthy and dusty. The tenants stated that they both suffered from dust allergies. The tenants are seeking the pro-rated value of their rent as compensation. The tenants

stated that \$1400.00 divided by 31 days = \$45.00 x 8 days loss of use of one bedroom = \$360.00 compensation claim.

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 tenants have not satisfied me of all of the above grounds as required, specifically grounds #2 and #3. In the tenants own documentation that they provided for this hearing there is an e-mail chain that reflects some misunderstanding and miscommunication with the landlord and between the two tenants themselves. In that e-mail chain the rental agent refers to scheduling the repairman to address the issues of the tenants which is in direct conflict to the tenants' testimony about the "verbal agreement" for all issues to be addressed by move in. Based on the ambiguous and unclear nature of the documentation provided by the tenants I dismiss their claim.

Conclusion

The tenants' application is dismissed.

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 11, 2013

Residential Tenancy Branch

