



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 filed on August 28, 2013, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Is the Tenant entitled to a Monetary Order?

Background and Evidence

The Tenant provided undisputed testimony that she entered into a fixed term tenancy agreement that began on July 1, 2012, and switch to a month to month tenancy after July 1, 2013. Rent was payable on the first of each month in the amount of \$1,425.00 and on June 20, 2012 the Tenant paid \$712.00 as the security deposit. The tenancy ended July 15, 2013, based on a mutual agreement to end tenancy. The Landlord resides outside of the province and had designated a local person as his property manager.

The Tenant testified that on October 13, 2012 an outside water main broke causing extensive damage to her rental unit. A remediation company attended to the initial clean up of the unit and then in December 2012 the Strata adjuster told her she would be required to move out of the unit so they could complete the repairs. It was at that time that she contacted her insurance company to make a claim.

The Tenant stated that she is claiming compensation of \$1,425.00, an amount equal to one month's rent, plus \$50.00 for travel (mileage and gas fees). This compensation is for her property management type services that were provided to the contractors who needed access to her unit to complete the repairs. She indicated it was her choice to be at the unit to grant the contractors access to the unit as she did not want the property manager at her unit without her.

The Tenant confirmed that she initially told the Landlord that she would deal with all the contractors to allow them access to the unit, instead of dealing with a third party. She argued that she communicated her frustrations to the Landlord about the extraordinary amount of time and expenses she was incurring during the restoration. She acknowledged that during that time she never asked the Landlord to compensate her for her time or mileage and she never requested that someone else look after access to her unit.

The Tenant testified that she was granted a rent reduction of \$175.00 per month from November 1, 2012 to February 15, 2013. She argued that compensation was not adequate for her time spent between the incident on October 12, 2012 and when the repairs were completed on March 1, 2013. She is also seeking \$7.00 as reimbursement for keys that she had cut and gave to the contractors because she forgot to claim for that when the Landlord had paid her for other incidental expenses such as felt pads for her furniture.

The Landlord disputes the amounts claimed by the Tenant. He does not believe he should have to pay the Tenant any more compensation. He drew attention to the rent reduction of \$175.00 and noted that there was a further reduction because no rent was charged for the period of February 16 -28, 2013 which is the period when the Tenant was out of the unit.

The Landlord argued that the Tenant had his property manager's contact information. He did not have a key to the unit because that was the Tenant's choice, she did not want him to have access during her tenancy. In regards to the keys which she said were cut for the contractors, he noted that the Tenant's evidence indicates the keys were cut for the realtor. He disputes the claim for mileage because she did not provide receipts

or mileage and never once mentioned she would be claiming for that. He also noted that the ending of the tenancy was initiated by the Tenant, not the Landlord, and they mutually agreed to end it mid month without having the Tenant pay for the last two weeks of July's rent.

In closing the Tenant confirmed she did not pay rent for February 16 – 28, 2013. She argued that she had to pay the difference between her temporary accommodations and what her insurance would cover; therefore it still cost her additional money. Furthermore, she was not granted replacement cost on her possessions which were lost during the flood. She acted in good faith to manage the Landlord's property and should be compensated for all the time she allowed access to the contractors and the real estate agent.

Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement;
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation;
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Only when the applicant has met the burden of proof for all four criteria will an award be granted for damage or loss.

In this case the evidence supports the Tenant suffered a loss of quiet enjoyment in her suite when a water main broken and her unit had to be repaired. The Landlord compensated the Tenant for that loss by reducing the rent by \$175.00 from November 1, 2012 to February 15, 2013 and by not collecting rent for the period of February 16 – 28, 2013. I find this compensation to be generous given the circumstances presented to me during the hearing.

The Tenant seeks further compensation for services she provided to allow contractors into the building. The Tenant offered these services on her own accord and at no time did she inform the Landlord that she would be charging for her services. Furthermore, she made a conscious choice to refuse access to her rental unit to the Landlord's

property manager or anyone else who could have managed the contractor's access during the repairs.

Contract for services are not covered by the *Residential Tenancy Act* and there is no evidence before me that the Landlord breached the Act. If at any time the Tenant felt she should be compensated for her time she ought to have contacted the Landlord and negotiated an arrangement at the time she was providing the services. Accordingly, I there to be insufficient evidence to meet the test for damage or loss, as listed above, and the claim is dismissed, without leave to reapply.

There were no receipts provided to support the remaining items claimed for mileage, gas, and keys. Therefore, there is insufficient evidence to prove the actual value of the loss. Accordingly, I dismiss this portion of the claim, without leave to reapply.

The Tenant has not been successful with their application; therefore I decline to award recovery of the filing fee.

Conclusion

I HEREBY DISMISS the Tenant's claim, 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: December 13, 2013

Residential Tenancy Branch

