



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for a return of their security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee.

The female tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, neither party raised any objections to the service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit, further monetary compensation, and to recover the filing fee?

Background and Evidence

I heard evidence from the parties that this tenancy began on June 15, 2013, ended on September 24, 2013, that a final inspection occurred on October 7, 2013, monthly rent

was \$850, and the tenants paid a security deposit of \$425. The tenants' security deposit has been returned to the tenants.

The tenants' monetary claim is \$1364, for various charges including fuel costs, restaurant food, hotel expenses, moving expenses, replacement of freezer food, and other miscellaneous costs.

In support of their application, the tenant submitted written evidence stating that they are entitled to their costs claimed as the tenancy agreement became frustrated as of September 25, 2013, when an electrical fire occurred in the residential property, which was the rental unit shared with the landlord's place of residence. Due to this, according to the tenants, the landlord, as owner of the property, was responsible for their relocation costs and other expenses associated with suddenly losing their home, such as their reasonable hotel costs until they secured a new rental unit, beginning on October 1, 2013.

In their testimony, the tenant submitted that as there was no electrical power in the rental unit, they had to vacate, and were to be out of the rental unit by October 7, 2013, with all their belongings, as the landlord's demand.

The tenant testified that she could not come back and that the landlord made clear that she was not going to repair or rewire the home.

The tenant testified that she suffers from Post Traumatic Stress Disorder, which was further aggravated when having to pack up suddenly in three days and facing humiliation due to the neighbours' questions.

The tenant contended that they were unable to purchase tenant's insurance, as the rental unit was an illegal suite, requiring the landlord to pay for their expenses during their relocation period.

The tenant's relevant documentary evidence included receipts for expenses, hotel costs, food costs, miscellaneous expenses.

In response, the landlord testified that there was an electrical panel fire in her home on September 24, 2013, which she discovered after arriving home, finding the house was full of smoke. Emergency personnel were called to the rental unit, according the landlord.

The landlord testified that the tenants came by the home the next day and informed the landlord they were moving, as verified by an email, and that all parties agreed the tenancy agreement was frustrated.

The landlord submitted that she returned the balance of rent for September, due to the tenancy agreement being frustrated as of September 24, 2013.

The landlord disagreed that she informed the tenants that there would be no repairs and denied any previous electrical problems and in fact did such repairs, obtaining final approve from the electrical inspector to energize the entire home as of December 9, 2013.

The landlord's relevant documentary evidence included a copy of a fire department notice regarding the incident of September 24, 2013, the tenancy agreement, her hotel bills, email communication between the parties, the electrical building inspectors' official approval, and incident reports.

In response, the tenant confirmed that all three parties, the two tenants and the landlord, came to an agreement that the tenancy was over as of the day of the electrical fire.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenants in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 44 of the Act provides that a tenancy will end, among other things, when a tenancy is frustrated. Residential Tenancy Branch Policy Guideline 34 provides that a contract is frustrated when it becomes incapable of being performed, through no fault of the other party.

I find that the evidence supports that the tenancy agreement became frustrated on September 24, 2013, when an unforeseen fire broke out in the electrical panel, resulting in the end of the tenancy as the rental unit became unlivable.

The tenants have not shown that the landlord was negligent or has violated the Act as there was no disagreement that the fire was unforeseen.

I therefore find that the tenants have not met their burden of proof and I dismiss their claim for monetary claim for possessions, storage, hotel, gas, moving, and food costs, which would generally be covered by tenants' insurance.

As the tenants' security deposit has been returned, I have not dealt with that portion of the tenants' application.

I note that the tenants claimed they were unable to obtain tenants' insurance due to the rental unit allegedly being an illegal suite; however the tenants provided no evidence that this was the case.

Conclusion

The tenants' application is dismissed, 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: January 27, 2014

Residential Tenancy Branch

