



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC

Introduction

This hearing was convened by way of a conference call in response to an application made by the tenant for a Monetary Order for the cost of emergency repairs and money owed or compensation for loss or damage under the *Residential Tenancy Act* (referred to as the “Act”), regulation or tenancy agreement.

The landlord appeared for the hearing with an agent who assisted her during the hearing. The tenant appeared for the hearing and provided affirmed testimony. The tenant confirmed that she had served the landlord with the Notice of Hearing documents personally on October 23, 2013 which the landlord confirmed receipt of. Based on this, I find that the tenant served the hearing documents to the landlord in accordance with the Act.

The landlord confirmed receipt of the tenant’s evidence intended to be used for the hearing but the tenant denied receiving the landlord’s evidence for the hearing. The landlord provided a Canada Post tracking number and receipt which shows that a copy of the evidence was served to the tenant by registered mail on January 16, 2014. Based on the evidence provided by the landlord to prove service of the evidence on the tenant, I accept the landlord’s evidence and consider this in my decision below, along with all of the affirmed testimony during the hearing and the tenant’s documentary evidence.

Both parties were invited to present witnesses to provide affirmed testimony for the hearing. The landlord provided one witness, the husband of the landlord, who provided affirmed testimony during the hearing. However, the tenant declined to produce any witnesses although she relies on the witness statement provided as evidence.

Issue(s) to be Decided

- Is the tenant entitled to monetary compensation for emergency repairs and damage or loss under the Act?

Background and Evidence

The landlord testified that the tenant viewed the rental suite with the landlord on October 10, 2011 and agreed to accept the tenancy for the rental suite for October 15, 2011. However, the tenant wanted to move in straight away as she had no other place to go with her children but could not because the rental suite had not been cleaned. As a result, the landlord allowed the tenant to move in earlier because the tenant offered to do the cleaning of the rental suite by herself.

As a result, the landlord agreed with the tenant that she could move in earlier than the proposed date of October 15, 2011 and, on October 13, 2011 a written agreement, provided by the landlord as evidence, was made with the tenant to complete the cleaning of the rental suite. In return, the agreement stated that the landlord would forgo 3 days of rent so that the tenant would only have to pay from October 15, 2013 onwards to the end of the month in the amount of \$500.00 and \$500.00 for the security deposit. After, October, 2011, the remaining rent was established at \$1,000.00 payable by the tenant to the landlord on the first day of each month. No condition inspection reports were completed.

The tenant testified that she wanted to view the rental suite on October 10, 2011 but was unable to do so because when the landlord and the tenant visited the rental suite, they could not gain access because the current renters were arguing with the landlord. As a result, the landlord showed the tenant a similar unit to the one that the tenant was supposed to see and it was on this basis that the tenant decided to move ahead with the tenancy. The tenant testified that she moved in on October 14, 2011 and paid rent for October 15, 2011 onwards. The tenant denied signing the written tenancy agreement presented by the landlord for this hearing.

The landlord denied showing the tenant another unit and testified that the tenant was so desperate to move in that she wanted to accept the rental suite in its current condition. The landlord provided a note documenting the fact that the tenant had been given the keys to the rental suite on October 13, 2011 and not October 14, 2011 as claimed by the tenant.

The tenant testified that shortly after taking possession of the rental suite, she noticed that the cleaning of the rental suite required a lot more effort than she had originally seen. The tenant testified that there were hypodermic needle ends stuck in the wall, the basement had not been cleaned and contained drug paraphernalia and vitamin C packs. There was a lot of debris left behind by the previous tenants including blankets that contained needles.

The tenant provided photographic evidence which she stated was dated, but the copies provided for this hearing were not. The photographs show needle ends stuck in the walls and debris in the rental suite as well as blood spatters in the bathrooms.

The tenant realised that this would be a big safety hazard to her children and as a result called the landlord and advise her of the need for a proper clean up of the rental suite. The landlord sent her husband and his cousin to deal with the problems. The tenant testified that the landlord's husband told her that she could either stay in the rental suite or go; when she showed him the needle ends in the walls, the tenant testified that the landlord's husband simply pulled them out and threw them out of the window creating a safety hazard for other residents in the area.

The tenant testified she had no choice but to stay because she had no other place to go with her children and as a result, took it upon herself to deal with the clean up. The tenant testified that she consulted with the Biohazard unit of Interior Health who advised her that it would cost about \$20.00 per hour for such a clean up to be done. The tenant asked some friends to help her and testified that it took her and her friends 14 hours per day to clean the rental suite and an additional 48 hours to complete the cleaning as she got no sleep for two days. The tenant also stated that she had to go back and forth to get needle disposal boxes and using fuel and time in the process. As a result, the tenant claims \$2,100.00 for the time spent on cleaning the rental suite. The tenant provided a witness statement from one of the friends verifying that the tenant had been assisted with the cleanup of the rental suite.

The tenant also claims \$400.00 for cleaning supplies which she used in the cleanup. The tenant claimed that she had provided receipts for these costs but none had been provided relating to the claimed costs apart from a photo-center gift card which the tenant was not even aware that she had submitted.

The landlord's husband testified that he and his cousin visited the tenant's rental suite straight away after she had phoned the landlord to complain of the issues with her suite. The landlord's husband stated that they moved a washing machine in order to remove some needles which he suspects were from the previous renter who was a diabetic and completed some painting touch ups in the rental suite. On leaving the rental suite, the landlord's husband said that the tenant was happy with the work they had done and no other issues were raised by the tenant.

The landlord testified that on February 14, 2012, the tenant provided them with a written notice of her intention to vacate the rental suite on April 1, 2012 but ultimately left the suite on March 15, 2012 making no mention of her reason to leave the rental suite and

of her claim for compensation. The landlord testified that at no point did the tenant give a written notice to the landlord to do this cleanup and submits that this was because the tenant had received three days free rent for her doing the work. In the landlord's written submissions, the landlord submits that the photographic evidence does not belong to his rental suite.

When the tenant was questioned as to why it has taken under 2 years to make her application, the tenant stated that she has been so busy with her children who have been ill that she did not get a chance to make the application as her children are priority.

Analysis

When a party makes a claim for monetary compensation for damage or loss and emergency repairs under the Act, the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenant relies on photographic evidence to support her claim but is unable to prove when these photos were taken as no date on the copy provided for the file is evident. There is no condition inspection report completed by any of the parties which would have indicated the extent of the damage at the start of the tenancy.

In my analysis of this tenancy, I accept the landlord's version of the events that the tenancy started on October 13, 2011 as per the signed tenancy agreement. I do not accept the tenant's submission that she did not sign the tenancy agreement as it contains her signature. I also accept that, as per the written agreement, also signed by the tenant, that the tenant entered into the tenancy with the landlord on the understanding that she would complete the cleaning of the rental suite in lieu of three days free rent which I accept that the tenant received. If the tenant felt that the cleaning went beyond the scope of what was agreed with the landlord, then the tenant should have utilized the methods under the Act via written requests or dispute resolution to deal with the issue by having the landlord complete the repairs.

The tenant testified that she had no choice to stay in the rental suite because she had nowhere to go but testified that the conditions in the rental suite were so bad that they endangered the health and safety of her children. If the tenant clearly felt this threat

then again, she could have used the remedies under the Act above or sought to end the tenancy and recover her losses at that point. Instead the tenant completed the cleaning and failed to address the issue of the repairs or compensation with the landlord in writing during the tenancy, choosing to make an application against the landlord after a lengthy period of time.

I also find that the landlord should not be held responsible because of the tenant's circumstances, namely that she had nowhere to go and was forced to stay. Again, the tenant had options under the Act to deal with the issues accordingly and did not exercise them, thus failing to mitigate her loss.

I also find that the tenant failed to provide sufficient evidence for her cleaning costs in the form of receipts or invoices and I find that her claim for the extensive hours that it took her and her friends to complete the cleaning appears exaggerated.

In relation to the evidence provided by both parties, I find that the tenant's evidence is no more compelling than the landlord's evidence and I find that the tenant's monetary claim has insufficient evidence to meet the burden of proof for me to award the costs claimed.

Conclusion

For the reasons set out above, I dismiss the tenant's application without leave to re-apply.

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 28, 2014

Residential Tenancy Branch

