



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SORENSEN AND BOWERS CONSTRUCTION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

The tenant applies for a monetary award for damages suffered as a result of a fire in her apartment building.

Issue(s) to be Decided

Is the landlord legally responsible for the tenant's loss? If so, what is reasonable compensation?

Background and Evidence

The rental unit was a one bedroom apartment in a 61 unit apartment building. The tenancy started December 1, 2013 for a fixed term ending May 31, 2014. The monthly rent was \$750.00. The landlord received a \$375.00 security deposit at the start.

Shortly after the tenant and her young child moved in, during the early morning hours of December 10, a fire started in a nearby apartment. The building was evacuated. The fire was eventually put out but the tenant's apartment was destroyed. Clearly, the rental unit was no longer habitable and would not be so until extensive renovation and remediation were done. Work is still ongoing as of this hearing date.

The community's emergency services and the Red Cross housed the tenant, her child and others from the apartment in a hotel. The tenant was able to find replacement accommodation in early January.

She, along with many others, was denied re-entry to the building until late in December. She describes an incident where she was led to believe she could retrieve her belongings on December 24th. She testified that she hired a truck and swamper to assist her. However, she says, she was turned away at the building by the restoration workers who informed her that because of the asbestos in the building, all her belongings were ruined.

Despite that, a few days later she and her parents were able to retrieve what belongings were salvageable but only after signing a release absolving the restoration company from liability in regard to asbestos that might be on any retrieved article. The tenant indicates that because of the apparent misdirection on December 24th, she went out and purchased a couch, a bed and various kitchen items at a cost of about \$5000.00. She says that when she was shortly later allowed to retrieve her original items, she gave the newly purchased items away. She has no receipts for any of those items.

The landlord's representative showed, and it is not in dispute, that the fire was caused by the tenant in #106 having left a pot on a stove. She showed, and it is not in dispute, that she received the tenant's new address on January 4th and on January 5th repaid the tenant her security deposit and the balance of rent for December.

The landlord's representative called Mr. F. as a witness. He works for the restoration company and was involved with the tenant's retrieval of her goods. He denies misleading the tenant about retrieving her goods on December 24. He denies any implication that he would charge the tenant for simple retrieval of her belongings nor if she simply chose to leave her goods in the destroyed apartment.

The landlord's representative points out that the tenancy agreement, clause 29, requires the tenant to have her own insurance and states that the landlord "will not be responsible for any loss or damage to the tenant's property."

Analysis

This is a very unfortunate situation. Yet it is clear that the tenant's claim is misplaced. The landlord did not, either directly or indirectly, through an action or its inaction, cause or contribute to the fire nor did it somehow breach its tenancy agreement. The tenant's claim is properly against the tenant in #106, who would appear to have been negligent in leaving a pot unattended on a hot stove..

I find that the landlord is not legally responsible for the damages suffered by the tenant as a result of the fire of December 10th.

There is a second occurrence that directly involves the landlord, through its restorers and that is the tenant's claim that she attended with her mover and a truck on December 24th having been informed by "Brenda" that she could retrieve her goods, only to be denied by the restorer. Had those facts been established, then possibly the landlord would be responsible for the cost thrown away because of that attendance.

However, in the face of competing evidence from the restorer, the tenant has not established those facts on balance of probabilities. In any event, there was no objective evidence to establish any loss from that alleged incident.

It is not necessary for me to determine the validity of liability portion of clause 29 of the landlord's standard form tenancy agreement or consider that it may be contrary to the obligations and liabilities imposed on a landlord under the *Residential Tenancy Act*.

Conclusion

The tenant's 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: July 21, 2014

Residential Tenancy Branch

