



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNDC, RR, FF*

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for the loss of her personal belongings that were damaged during a water leak, for the return of rent for the month of September 2014, for the return of the security deposit and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Since the tenancy has not yet ended, the tenant's application for the return of the security deposit is premature and accordingly dismissed with leave to reapply.

Issues to be decided

Was the landlord negligent in responding to the repairs after the water leak? Is the tenant entitled to compensation?

Background and Evidence

The tenancy started on April 01, 2014 for a fixed term ending on March 31, 2015. Rent is \$886.00 due on the first of each month. The landlord filed a copy of the tenancy agreement signed by both parties. Clause # 28 states the following:

Tenants are advised to carry adequate insurance coverage for fire, smoke and water damage and theft, on their own possessions and may be held liable for accidental damage, or accidental breakage arising from Tenant's abuse, willful or negligent act or omission or that of his guests in his use of the landlord's services and property.

The tenant testified that on September 04, 2014, sometime before 8:00 pm, she returned to the rental unit to find a leak in a hot water pipe. The rental unit was flooded and was filled with steam.

The tenant called the emergency number provided by the landlord and also called the fire department. The landlord's maintenance employee arrived after the fire department. The landlord also sent in a plumber who fixed the leak. Work to dry the rental unit continued until 11:00pm.

The landlord proceeded to make arrangements for the repair of the flooring, baseboard and damage to the wall. On or about September 24, 2014 new flooring was installed. The tenant stated that as of the date of this hearing, some work was yet to be finished. The landlord stated that the tenant did not notify her about any discrepancies and agreed to take care of discrepancies as soon as the tenant gave her a list.

The tenant stated that the work took too long and she was inconvenienced. The hole in the wall was not finished and the edging of the laminate was also not yet fully done. The tenant is claiming the return of one month's rent as compensation.

The tenant stated that her items that were water damaged included her lap top, her antique table and her mattress. The tenant is claiming \$1,400.00 as compensation for the replacement of these items.

Analysis

Section 32 of the *Residential Tenancy Act*, speaks to the landlord and tenant obligation to repair and maintain the rental unit. The landlord must provide and maintain the rental property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

In this case, I find that the landlord fulfilled her obligations by acting in a timely manner to make the necessary arrangements to repair the damage and restore services to the tenant. Based on the evidence in front of me and the sworn testimony of both parties, I find that the landlord's employees fixed the leak and dried out the apartment immediately after the leak. The landlord made arrangements to have the floor replaced, dispose of the tenant's mattress and fix the hole in the wall.

The tenant did not inform the landlord of any discrepancies and based on the testimony of the tenant, I find that the discrepancies are cosmetic. The landlord has agreed to take care of discrepancies as reported by the tenant.

The tenant has applied for the return of one months' rent as compensation. During the period of repairs and floor replacement, I find that the tenant was inconvenienced thereby resulting in a loss of the value of the tenancy.

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation and the length of time over which the situation has existed. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. However a tenant may be entitled to reimbursement for loss of the value of the tenancy even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right.

Based on the sworn testimony of both parties, I find that the tenant has not proven negligence on the part of the landlord but has proven that she was inconvenienced by the repair work. Therefore I find that the tenant is entitled to nominal damages and I award the tenant a minimal award of \$100.00.

The tenancy agreement required the tenant to have insurance to protect her personal belongings. By signing the tenancy agreement the tenant agreed to carry her own insurance and therefore the landlord is not responsible for damage to the tenant's personal property. Accordingly, I dismiss the tenant's claim for \$1,400.00.

Since the tenant has proven a portion of her claim, I award the tenant the recovery of the filing fee of \$50. Overall the tenant has established a claim of \$150.00.

Conclusion

The tenant may make a onetime deduction of \$150.00 from rent due on December 01, 2014.

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: November 07, 2014

Residential Tenancy Branch

