



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC, ERP, RP, O

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 47;
2. A Monetary Order for compensation– Section 67; and
3. An Order for emergency and other repairs – Section 32.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matters

At the onset of the hearing the Tenant withdrew the claims for repairs stating that the repairs were completed by the Landlord. The Tenant also clarified that there was no claim for a cancellation of a notice to end tenancy as none had been received and the mark on the application indicating such a claim was made in error. The Tenant clarifies that it is only seeking compensation of \$308.20 for loss of use of the unit. The Tenant stated that it was seeking return of the security deposit although the Tenants are still in the unit. As the Tenants are still in the unit and as a claim for the return of the security deposit is only available after a tenancy ends, I find that the Tenant cannot yet make this claim and I note that the Tenant has leave to reapply on this claim after the end of the tenancy.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Background and Evidence

The tenancy started on April 1, 2014. Rent of \$925.00 is payable monthly.

The Tenant states that between November 27 and approximately December 10, 2014 the unit flooded three times. The Tenant states that the Landlord immediately responded to the flood and set up fans. The Tenant states that the Landlord was not negligent in responding to the flood but that the Tenant lost the use of half of the living room as a result of the flood and repairs and that the old carpet was replaced without being cleaned. The Tenant claims \$308.20 for the loss of use of the unit for 10 days.

The Landlord states that the water ingress was seepage and not a flood and that it only occurred twice during the period stated by the Tenant. The Landlord states that after the first and second seepage the Tenants were offered the use of another unit to compensate for the loss of the living room area but that the Tenant refused. The Landlord states that the carpets were examined by a restoration company and were found not to be wet so it was glued back on. The Landlord states that they offered to glue the carpet back on December 8, 2014 but that the Tenant refused this offer as the Tenant was not available to be in the unit at the time.

The Tenant states that while the extra unit was offered, it was only used on one occasion and that it was not convenient to use as the Tenant was unable to access services such as the internet in this unit.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the

costs claimed, and that costs for the damage or loss have been incurred or established. Considering the undisputed evidence that the Tenant was offered a second unit but did not make use of this unit I find that the Tenant failed to mitigate its claim for compensation over the loss of use of rental space. Further, there is no evidence that the Landlord acted negligently in responding to the flood or seepage. As such there is no evidence to support that the Landlord failed to comply with the Act or tenancy agreement and I dismiss the claim for compensation.

Conclusion

The 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: January 20, 2015

Residential Tenancy Branch

