



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for money owed or compensation under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue to be Decided

Is the tenant entitled a monetary order for money owed or compensation under the Act?

Background and Evidence

The tenancy began in April 2014. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$500.00 was paid by the tenant.

The parties agreed on January 26, 2015, there was a flood in the neighbouring unit, which caused water to flow into the tenant's unit, causing damage to the wood floors, to the tiles on the kitchen floor and the kitchen cupboards had to be replaced.

The tenant acknowledged that they did not have tenant's insurance, which I note is contrary to their tenancy agreement. The parties agreed the tenant was given the opportunity to find additional accommodation while repairs were to be made, however the tenant chose to remain in the rental unit.

The tenant testified that the landlord promised her a rent reduction of \$500.00 per month until the work was completed. The tenant stated that she received the rent reduction of February 2015; However, the landlord later changed the amount to \$250.00 for the month of March 2015. The tenant seeks to recover an addition \$250.00 as that is the difference between the amount she was originally promised (\$500.00) and the amount she received (\$250.00).

The landlord testified that they had no control over the flood. The landlord stated that they were originally told by the restoration company that the repairs would take four months; however, the repairs to the unit were completed very quickly and it was only a temporary inconvenience to the tenant. The landlord stated that had the tenant had proper insurance they would have paid for her accommodations elsewhere while the unit was being repaired.

The landlord testified that they gave the tenant a \$500.00 rent reduction for the month of February 2015, as all the flooring in the two rooms were removed. The landlord stated all the flooring was replaced by the end of February 2015.

The landlord testified in March 2015, the restoration company did a further inspection and found excessive moisture behind the kitchen cupboards and the cupboards had to be removed. The landlord stated on March 9, 2015 the cupboards were removed and reinstalled on March 14, 2015. The landlord stated during this time the kitchen water had to be turned off, but the tenant had access to water in the rental unit. The landlord stated all the appliance were working.

The landlord testified that for March 2015, they offered the tenant a rent reduction of \$250.00, which the tenant provided them a rent cheque in the reduced amount. However, they have not cashed that cheque because they now feel that the tenant should be responsible to pay the full rent as they had no control over the flood and there was only temporary discomfort to the tenant while the repairs were made.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant 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. In this case, the tenant has the burden of proof to prove their claim.

7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, there was a flood in the rental unit on January 26, 2015, which was not within the landlords' control. The landlords took immediate action to make the necessary emergency repairs within a reasonable amount of time. I find the tenant has failed to prove a violation of the Act by the landlords.

Temporary discomfort or inconvenience does not constitute a breach of the covenant of quiet enjoyment, as it necessary to balance the rights of the landlords' to make repairs to the unit.

In this case, the tenant was given a rent reduction of \$500.00 for February 2015 and a further rent reduction of \$250.00 for March 2015. Although the tenant feels the rent reduction should be at the original amount offered, I find that any further compensation would be unreasonable as the tenant was only temporally inconvenienced.

Further, the tenant was in breach of their tenancy agreement by not having tenant's insurance, which would have paid for temporary accommodations elsewhere during this time and because they did not have insurance they remained in the rental unit.

Although the landlords feel the tenant should not be given any compensation for March 2015, I find that tenant had a right to rely on the landlords' action, when they told them that they could reduce the rent by \$250.00 and the tenant provided the landlord a cheque for rent in that amount.

Therefore, I dismiss the tenant's application for further compensation without leave to reapply. As the tenant was not successful with their application they are not entitled to recover the filing fee from the landlord.

The tenant is **cautioned** that they are required by their tenancy agreement to have tenant's insurance.

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: April 1, 2015

Residential Tenancy Branch

