



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for a monetary order for money owed or compensation for damages or loss under the Act, regulation or tenancy agreement, and have the landlord make repairs to the unit.

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

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to money owed or compensation for loss or damage under the Act?

Background and Evidence

The tenancy began on February 1, 2015. Rent in the amount of \$1,450.00 was payable on the first of each month. A security deposit of \$725.00 was paid by the tenant.

The parties agreed that on March 12, 2015, a faulty pipe in the kitchen seeped water underneath the wood floors, which was no fault of either party.

The tenant claims as follows:

a.	Loss of use of rental unit	\$ 152.50
b.	Loss of quiet enjoyment	\$ 160.00
c.	Loss of personal belongings	\$ 20.00

d.	Cleaning	\$ 60.00
e.	Filing fee	\$ 50.00
	Total claimed	\$ 442.50

Loss of use of rental of rental unit

The tenant testified that due to the leaking pipe they were unable to use the water in the kitchen or the dishwasher from March 12, 2015 to March 13, 2015, and the floors were wet. The tenant seeks compensation in the amount of \$13.00.

The tenant testified that on March 12, 2015, the landlord placed a dehumidifier in the rental unit; however, later that night the dehumidifier leaked water over an unaffected area of the wood floors and caused further damage. The tenant stated that they did not contact the landlord that evening and turned the dehumidifier off due to the lateness.

The tenant testified that they loss the full use of the living room and kitchen from March 14 – 20, 2015, since the floors were removed on March 14, 2015, and not replaced until March 20, 2015. The tenant seeks compensation in the amount of \$91.20.

The tenant testified that after further investigation of the flooring the landlord decided to replace the flooring in the foyer and hallway. The tenant stated that they were unable to use these areas from March 16 – 20, 2015. The tenant seeks compensation in the amount of \$36.80.

The tenant testified that on March 20, 2015, they were deprived the use of their bedroom as all their personal items had to place in the room while the new flooring was being installed. The tenant seeks compensation in the amount of \$11.00.

The landlord testified that at no time did the tenant loss the use of the kitchen, living room, foyer and hallway as they were fully usable during the time the repairs were being completed. The landlord stated that the tenant may have been temporary inconvenience; however, the repairs were necessary and completed within eight day of being notified of the problem.

The landlord stated that on March 12, 2015, the tenant could not use the cold water in the kitchen while the repair was being made to the pipe; however, the tenant had full access to the kitchen, all the appliances, including the dishwasher.

The landlord testified that the water seep underneath the wood floors and they placed a dehumidifier in the rental unit on March 12, 2015. The agent stated that the tenant was informed that the remediation equipment was required to remain on at all times, in the hopes the wood floors would dry. The agent stated that the tenant was also instructed at that time if there were any problems with the equipment to contact them right way.

The landlord testified that on March 13, 2015, when they went to the rental unit to check on the humidity level they discovered that the dehumidifier had been turned off and that water had over

flowed onto the wood floor causing further damage. The agent stated they were not notified by the tenant when the equipment malfunctioned. The agent stated that they were able to immediately rectify the problem by attaching a hose and allowing the water to drain in the sink and turned the dehumidifier back on.

The landlord's agent testified that over the next couple of days they continued to monitor the moisture level in the floors and they determined on March 14, 2015, that they would be unable to save the wood flooring. The agent stated that the kitchen and living room flooring was removed on that day. The agent stated the new flooring was scheduled to be installed on March 18, 2015 and dehumidifier was to remain on during this time to ensure the humidity level was safe to install the new flooring.

The landlord's agent testified that after further investigation of the foyer and hallway, they decided the floors should also be replaced as the moisture level in the flooring was reading high and the flooring was removed on March 16, 2015. The agent stated the installation of the flooring was also scheduled to be installed on March 18, 2015.

The landlord's agent testified that the new floors were scheduled for installation on March 18, 2015. However, the scheduled date had to be changed to March 20, 2015, as humidity level was not dropping to a satisfactory level. The agent stated that the counter numbers on the equipment indicated the tenant was turn off the dehumidifier 60% of the time, and the tenant was cautioned several times during the remedial period not to turn the equipment off.

The landlord's agent testified the tenant would have only been inconvenience by not having flooring for four days in two of these areas; however, due to the tenants actions of turning off the dehumidifiers contributed to the delay of the repairs by another two days.

The landlord's agent testified at no time did the tenant loss the use of any space in the rental unit. The landlord stated that the tenant's bedroom was usable, except may have been inconvenience during the day on March 20, 2015, as the tenant belongings were store in the bedroom while the flooring was being installed; however, the installation was completed by 6:00 p.m. and the tenant had full access to their bedroom.

The tenant responded that they do not agree that they were turning the dehumidifier off 60% of the time. The tenant stated that they asked the landlord in their correspondence to provide proof.

Loss of quiet enjoyment

The tenant testified that they seek compensation for loss of quiet enjoyment as they were disturbed by the dehumidifier running and poor air quality in the rental unit. The tenant stated that due to their studies times, they often need to be able to take a nap during the day.

The landlord testified that they do not agree that the tenant is entitled to any compensation for loss of quiet enjoyment. The agent stated that the dehumidifier was necessary to rectify the problem. The landlord stated that the tenant was turning off the equipment when they were in the rental unit, which they were warned not to do so. The agent stated that the tenant action was interfering with their rights to conduct business, and caused a delay in the repairs and extra cost for the rental of the dehumidifier.

Loss of personal belongings

The tenant testified that the landlord used a box of garbage bags, a shamwow, and their vacuum cleaner during the repairs. The tenant stated that their vacuum no longer works. The tenant stated that they did not give the landlord permission to use any of the above said items. The tenant stated that they have not provided any receipts or estimates for the said items. The landlord testified that when they were at the tenant's rental unit, the tenant was not home. The agent stated that the tenant's friend that was at the rental unit and gave them 3 or 4 garbage bags and a rag to use. The landlord stated that they did not take or use any item that was not offered to be used by the tenant's friend. The landlord denied they broke the tenant's vacuum.

Cleaning

The tenant testified that they had to spend three hours cleaning and bought cleaning supplies after the repairs were made. The tenant seeks compensation at the rate of \$15.00 per hour for three hours, plus supplies. The tenant stated they have not provided any receipt for the supplies purchased.

The landlord testified that they are not responsible for the tenant cleaning their personal property.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 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.

Section 32 the Act states, a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, the parties agree that the damage to the floors were not caused by the actions of either party. The parties agreed that the duration of this incident was from March 12, 2015 to March 20, 2015, a total of eight days.

Loss of use of rental of rental unit

In this case, I do not accept the tenant's evidence that they loss the partial use of the kitchen, or the living room between March 12, and March 13, 2015. While the cold water to the kitchen tap was turn off for a short period of time while the repair was made, the tenant had full access to hot water and both of these areas were fully usable. Further, nothing significant had changed in the rental unit, except the dehumidifier was on site in the attempt to saving the wood flooring.

While I accept the flooring was removed in the kitchen and living room on March 14, 2015, and that was a temporary discomfort to the tenant, there was no evidence that these two rooms were not functional without the flooring.

On March 16, 2015, the hallway and foyer flooring were also removed, as the landlord was not satisfied with the moisture reading. While I accept the removal of the flooring in these areas was a temporary discomfort to the tenant, there was no evidence that these areas could not be used.

In this case, the flooring was scheduled to be installed on March 18, 2015, four days after the kitchen and living room were removed and two days after the hallway and foyer were removed. This date had to be delay until March 20, 2015, as the humidity level in the rental unit was not yet at a satisfactory level.

However, I find the evidence supports that the tenant contributed to the delay by turning the dehumidifier off. While the tenant did not agree they turned the dehumidifiers off 60 % of the time, I find that is not relevant. What I find is relevant is the tenant turned off the dehumidifiers at all; even once would be an interference with the landlord rights to protect their property as the remediation equipment was place in the rental unit to remove excess humidity.

I find the tenant has failed to prove a violation of the Act, by the landlord and a corresponding loss. Therefore, I dismiss this portion of the tenant's claim.

Loss of quiet enjoyment

I accept the tenant was temporarily inconvenience while the landlord made the necessary repairs. I find it is necessary to balance the tenant's rights to quiet enjoyment and the landlord's right to make repairs; I find the landlord complied with section 32 of the Act and completed the repairs as quickly as possible to minimize the disruption to the tenant.

I find temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Therefore, I dismiss this portion of the tenant's claim.

Loss of personal belongings

In this case, I accept the landlord's evidence over the tenants that they were given a few garbage bags and a rag to use from the tenant's friend. The tenant was not present and provided no evidence to the contrary. Further, even if I accept the landlord used the tenant belonging, without consent, which I do not, the tenant has not provided proof of the actual amount lost. Therefore, I dismiss this portion of the tenant's claim.

Cleaning

In this case, the evidence of the tenant was they spent three hours cleaning after the repairs were completed. Although the tenant has submitted photographs they appear to have been taken while the work was in progress as you can see the labors equipment on site. I find the tenant has failed to prove a violation of the Act by the landlord and a corresponding loss. Therefore, I dismiss this portion of the tenant's claim.

Repairs to bedroom blinds

Although the tenant applied for repairs to the bedroom blinds, no evidence was given or considered. If the parties are unable to resolve the bedroom blind issue the tenant is at liberty to reapply.

As the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the tenant.

Conclusion

The tenant's application for a monetary order is dismissed. The tenant is at liberty to reapply if parties are unable to resolve the bedroom blind issue

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: June 9, 2015

Residential Tenancy Branch

