



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MND, MNDC, MNR, MNSD, OPN, OPR

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order, and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. The tenant confirmed that she received the Notice of Hearing Package along with the landlords' evidence. I am satisfied that the tenant has been served in accordance with the service provisions of the Act and the Rules of Procedure. Both parties gave affirmed evidence.

Preliminary Matter

Both parties advised that the tenant has moved out and paid all outstanding rent, accordingly I dismiss the landlords request for an order of possession and any monetary claims in regards to unpaid rent. The landlord advised that he is seeking a monetary claim for damages to his carport and water system and the recovery of the filing fee.

Issues to be Decided

Is the landlord entitled to a monetary order for damages?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about October 7, 2013 and ended on May 30, 2015. Rent in the amount of \$1100.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$550.00. The landlord stated that the tenant called him on February 12, 2015 to advise that the carport had collapsed and crushed her car. The landlord stated that the snow had accumulated to the point of causing the carport to completely

collapse. The landlord stated the tenants were responsible for the snow removal on the property and that due to their negligence the carport collapsed.

The landlord stated that he estimates that the snow accumulated to 24-36 inches when the carport collapsed. The landlord stated that the tenants signed an addendum to the tenancy agreement that states that snow accumulation is not to exceed 8 inches. The landlord stated that as a result of the carport collapsing, the water system to the house may have been damaged. The landlord stated that the debris from the carport damaged the plastic water line. The landlord stated that because the tenant was negligent, they should pay for the \$1573.95 for the emergency repair to the carport, the \$1228.98 for the repair to the water line and the \$14, 900.00 he was quoted to rebuild the entire carport.

The tenant gave the following testimony:

The tenant stated that she had regularly maintained the property including snow removal. The tenant stated that this was a “huge storm” over 72 hours that had massive accumulations. The tenant stated that right after the snow storm ended, a heavy rain storm began that made the roof slippery and dangerous to work on, and the snow very heavy and icy. The tenant stated that there was no negligence as her own car was crushed and that she suffered as much as the landlord. The tenant stated that the water system had not been functioning long before the carport collapsed and the landlord did nothing about it.

The tenant stated that she made all attempts to minimize the damage to the property and cleared the snow off of the roof of the home as the landlord did not attend until 9 days after the carport collapsed. The tenant stated she did everything she could possibly do and doesn't feel that she should be responsible for any of the costs.

Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

After hearing the testimony of both parties and reviewing all of the documentary evidence, the landlord has failed to satisfy me that he is entitled to the amount as claimed. The landlord has not satisfied me of grounds 2 and 4 as listed above. The landlord has not shown that the tenant was reckless or negligent in removing the snow; I find that the tenant took all reasonable steps to deal with snow and subsequent rain storm. It would be unreasonable to expect a tenant to climb on top of the carport in the midst of a heavy storm and risk their physical well being.

I find that the landlord did not take reasonable steps to mitigate and minimize the damage. The landlord did not attend until 9 days later to inspect or address the problem. In addition, the landlord has not provided any evidence that the water line was damaged as a result of the carport collapsing. In the landlord's own testimony he stated several times; "it may be as a result of the carport collapsing", I do not find that statement compelling. Based on all of the above and on the balance of probabilities, I dismiss the landlords' application in its entirety.

Conclusion

The landlords' application is dismissed in its entirety.

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 17, 2015

Residential Tenancy Branch

