



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

The tenant and the landlords attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process. At the outset of the hearing, neither party raised any objections to the service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation and to recovery of the filing fee paid for this application?

Background and Evidence

I heard evidence from the parties that this tenancy began on October 1, 2014, that monthly rent was \$800.00 and that the tenant paid a security deposit of \$450.00. The parties agreed that the tenant moved out of the rental unit on or about November 9, 2014.

The tenant's monetary claim is \$1810.79, for various charges including movers, lost wages, restaurant food, hotel expenses, damage to personal property, physiotherapy and massage expenses.

In support of her application, the tenant submitted written evidence stating that she is entitled to her costs claimed as the tenancy came to an end when her basement suite was flooded on November 3, 2014, making the rental unit uninhabitable. The tenant submitted that the flood occurred after a “really big rain” storm and the home was overwhelmed.

The tenant agreed that the flood was not the fault of the landlords; however, the landlords required her to have fully vacated the rental unit by November 9, 2014, according to the tenant, in order to have her November rent reimbursed and her security deposit returned,

The tenant submitted that she was required to move her personal property out of the rental unit into the garage, with assistance from the landlord. The tenant claimed that she lost wages as the result of having to dry and pack her belongings and that she suffered physical injuries from having to move her personal property.

The tenant’s relevant documentary evidence included receipts for a hotel, food and therapy bills.

Landlords’ response-

The landlord agreed that the basement suite, the rental unit, was flooded due to no fault of theirs, and that he responded immediately when the tenant called the night of the flood. The landlord submitted further that he assisted the tenant in moving her personal property to the shared garage and that he dealt with the restoration company, as the tenant left the premises.

The landlord submitted that they returned the full rent for November and the tenant’s security deposit.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party.

Section 44 of the Act provides that a tenancy will end, among other things, when a tenancy is frustrated. Residential Tenancy Branch Policy Guideline 34 provides that a contract is frustrated when it becomes incapable of being performed, through no fault of the other party.

I find that the evidence supports that the tenancy agreement became frustrated on November 3, 2014, when an unforeseen flood caused the rental unit to become uninhabitable.

I find the tenant has not shown that the landlords were negligent or have violated the Act as there was no disagreement that the flood was unforeseen.

I therefore find that the tenant has not proven that the landlords failed to comply with the Act or their tenancy agreement or that she took reasonable steps to mitigate her loss with the purchase of tenant's insurance, which generally covers expenses for damage to contents, storage, hotel, gas, moving, and food costs.

I therefore dismiss the tenant's application, without leave to reapply.

Conclusion

The tenant's application is dismissed, without leave to reapply.

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: July 15, 2015

Residential Tenancy Branch

