



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$1569.36 for reimbursement of rent for the period of July 13, 2015 to September 8, 2015 and reimbursement of the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on September 11, 2015. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- d. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on January 1, 2008. The tenancy agreement provided that the tenant(s) would pay rent of \$850 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$425 and a pet damage deposit of \$200 at the start of the tenancy. The rent has been increased to \$870 per month commencing October 1, 2015.

On July 13, 2015 the tenant experienced a flood from a leak that originated in the upstairs rental unit. She testified she spent part of that day removing the water from her unit. The restoration company was called and they placed fans and dehumidifiers in the rental unit.

The tenant testified the rental unit was not liveable for the period of time from July 13, 2015 to September 8, 2015. The first period of time she was subjected to the noise from the fans and dehumidifiers, the high temperature and humidity.. Later she was forced to leave because of the rental unit was not habitable due the condition of the rental unit and subsequent restoration work.. The stayed at her employer's and did not incur any out of pocket expenses. She seeks reimbursement of the rent for this period as she was not able to use her rental unit for the intended purpose. She testified she is not seeking out of pocket expenses or claim for damages to her belongings.

The landlord disputes the tenants' claims based on the following:

- The tenant failed to carry tenant's insurance. He submits had she carried tenant's insurance she could have recovered the loss which makes up this claim.
- The tenant did not suffer a loss as she stayed with her employer and was not charged rent.
- The tenant was not required to be out of the rental unit for the length of time she is claiming. He testified the fans and dehumidifier was in for about 1 ½ days and not the 7 days she claims. They did not do further work on her rental unit until after the first week of August. He does not dispute the time period for the last month ending on September 8, 2015.

The tenant testified there is no obligation in the tenancy agreement to carry tenant's insurance. Further, had she carried tenant's insurance it would have covered for out of pocket expenses but not reimbursement of rent. She disputes the landlord's testimony starting she was out of the rental unit for the period claimed. The tenant produced a letter from the Manager of the rental property dated July 13, 2015 that stated the tenant hasn't lived in her condo from July 13, 2015 to present.

Analysis

Section 32 of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Policy Guideline 16 includes the following statement

Claims for Breach of Contract

Prior to making a claim for breach of the tenancy agreement, the Legislation permits either the landlord or the tenant to apply for dispute resolution for an order that the other party comply with the tenancy agreement or the Act⁵ that governs the agreement. The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the loss resulted from the breach. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. Losses that are very unexpected are normally not recoverable. The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.

Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

I determined the tenant is entitled to the amount claimed based on breach of contract for the following reasons:

- I am satisfied the rental unit was not habitable for the period July 13, 2015 to September 8, 2015. I accept the evidence presented by the tenant that she did not have the use of the rental unit during that period.
- The landlord failed to provide the rental unit which was what was agreed to in the tenancy agreement. I determined the landlord is obliged to reimburse the rent for this period even though the landlord did not have cause the water problem as the landlord failed to provide what was agreed to in the tenancy agreement.
- The tenancy agreement did not include a provision that required the tenant to carry tenant's insurance.
- Further the landlord failed to prove that had she had tenant's insurance the insurance would have reimbursed the rent paid to the landlord.
- The tenant may not have incurred an out of pocket expense. However, this does not relieve the landlord from the obligation that if he is going to cash the rent cheque the landlord must provide a rental unit that complies with the tenancy agreement and Act.

As a result I ordered the landlord to reimburse to the tenant the rent paid for the period of time the rental unit was not habitable.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$1569.36 plus the sum of \$50 in respect of the filing fee for a total of \$1619.36. At the hearing the tenant testified she did not make a claim for the cost of the filing fee. An examination of the tenant's Application for Dispute Resolution indicates she did make that claim.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: November 24, 2015

Residential Tenancy Branch

