



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, O, ERP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony.

Preliminary Issue

At the outset the tenants stated that the landlords were served with the notice of hearing package by Canada Post Registered Mail on December 15, 2015. The landlords disputed this stating that it was not received until early January 2016. Both parties consented to the arbitrator making an online search with the Canada Post Registered Mail Tracking Number to clarify service. An online search of the Canada Post Website shows that the package was received by Canada Post on December 15, 2015 and was not delivered to the landlord until January 5, 2016. The notation on the website shows that the tenant indicated the wrong address for delivery. The landlord confirmed that the address on the envelope was incorrect and was stamped by Canada Post as such. The landlord has however stated that they are prepared to proceed and that there is no reason to delay the hearing. As such I find that both parties have been properly served with the notice of hearing package as per sections 89 of the Act. The tenant submitted late evidence which the landlord has objected to. The landlord stated that the tenant's late evidence was unfair and that the landlord did not have opportunity to properly respond to it. The tenant provided no explanation as to why their documentary evidence was filed late. In the interest of fairness, I find that the tenants' late documentary evidence is excluded as it is considered highly prejudicial and unfair as the landlord has not been given an

opportunity to respond. The landlord submitted late evidence which was not served to the tenant. The landlord stated that written submissions were provided in response to the tenant's claims. As the tenant was not served with the late evidence and the landlord's documentary evidence submitted consisted of primarily written submissions, I find that the landlord's late evidence is excluded. The landlord was informed that the landlord was at liberty to provide direct testimony regarding the written submissions if she chose to.

During the hearing both parties confirmed that the tenants vacated the rental unit on January 3, 2016. As such the tenant's application for emergency repairs and an order for the landlord to comply with the Act were withdrawn by the tenants. No further action is required for these portions of the tenants' application. The hearing proceeded strictly on the tenants' application for a monetary order.

During the hearing the tenants stated that they have moved, but will not provide a new mailing address for fear of reprisals from the landlords.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation or money owed and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and my findings are set out below.

This tenancy began on September 1, 2015 on a fixed term tenancy ending on September 1, 2016 as shown by the submitted copy of the signed tenancy agreement dated August 12, 2015. The monthly rent is \$1,250.00 payable on the 1st day of each month. A security deposit of \$625.00 and a pet damage deposit were paid on August 12, 2015.

The tenant seeks a monetary claim of \$25,000.00 which consists of:

\$3,000.00	Moving Costs
\$10,000.00	Injuries to tenant, R.D.
\$13,000.00	Emotional suffering for tenants
\$25,000.00	Total

The tenants stated that they have suffered 2 falls and injuries due to stress caused by the landlord. The tenants were unable to provide any specific details of the monetary claim stating that they "did not know how much damage the landlord will do." The tenants stated that the monetary amount was "arbitrary" amount due "emotions stress" and for their moving costs. The

tenants stated that there were power outages caused by the landlords. The tenants also stated that the landlord was under stress from the landlord's husbands gambling and drug problems.

The landlord disputes the claims of the tenants stating that there has been no interruption of electrical service that they are aware of. The landlord also stated that the tenants vacated the rental property without notice, failed to pay for December utilities and changed the locks of the rental unit without notice or permission.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove on the balance of probabilities that the landlords caused the damage/loss and that it was beyond reasonable.

The tenants have provided affirmed testimony that the landlords were negligent in causing a loss of quiet enjoyment of the rental property. The landlords have disputed these claims. The tenants have "arbitrarily" sought a monetary claim without sufficient details to support their monetary claim. The tenants have not provided sufficient evidence that the landlords were negligent in causing any injuries due to the rental property. I find on a balance of probabilities that the tenants have failed to provide sufficient evidence that a loss of quiet enjoyment occurred. The tenants have also failed to provide sufficient evidence of an actual amount for the loss of quiet enjoyment. The tenants' application is dismissed.

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: February 09, 2016

Residential Tenancy Branch

