



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNR, MNDC, MNSD, FF

Introduction

On September 22, 2016, the Tenant applied for dispute resolution seeking the following:

- to cancel a Notice to end tenancy given for cause
- to cancel a Notice to end tenancy for unpaid rent and/or utilities
- for a monetary order for money owed or compensation for damage or loss under the Act, regulations, or tenancy agreement.
- for the return of the security deposit
- to recover the cost of the filing fee.

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. The Tenant was assisted by a legal advocate J.B.. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

At the start of the hearing the Tenant testified that she moved out of the rental unit on September 27, 2016. Since the tenancy has ended, the Tenant's request to cancel the 10 day Notice, and the 1 month Notice, is dismissed. Whether or not the tenancy will continue is no longer an issue that needs to be decided.

At the start of the hearing I asked the Tenant to clarify her monetary claim. The Tenant clarified her claim as follows:

- 50% of the rent she paid from September 11, 2016, until September 30, 2016.
- 50% of the rent she paid for July 2015, and October 2015.
- 50% of the rent she paid from November 1 to November 13, 2015.

The Tenant withdrew her claim to be compensated for hydro/ utilities.

The Landlord testified that she understood the Tenant's claims and The Landlord stated that she wished to proceed with the hearing.

During the hearing the parties testified that the Landlord has already returned the security deposit to the Tenant, after rent was deducted. The Tenant agreed that the Landlord could retain the amount for rent from the deposit. Since the security deposit issue was resolved prior to the hearing, the issue is dismissed.

Issues to be Decided

- Is the Tenant entitled to compensation for damage or loss under the Act, regulations or tenancy agreement?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on July 1 2015, as a month to month tenancy. Rent in the amount of \$1,900.00 is due on the first day of each month. A security deposit of \$950.00 was paid by the Tenant to the Landlord.

The Tenant testified that there were two occasions where the rental unit had flooding issues during her tenancy. She testified that on July 2, 2015, there was a flood in the basement. She testified that she notified the Landlord of the flood. The Tenant testified that she lost some use of the rental unit until November 13, 2015.

The Tenant testified that on September 11, 2016 there was another flood in the basement of the rental unit. The Tenant testified that she lost some use of the rental unit until September 30, 2016.

The Tenant testified that the rental unit has three floors, with the basement containing two bedrooms, and office, a bathroom, a laundry room and a pantry. The Tenant testified that there are three bedrooms and two bathrooms on the floors above.

The Tenant's advocate submitted that the Tenant is seeking partial return of the rent paid because the Tenant was unable to use the basement between July 2015, and November 2015.

She submits that the Tenant also lost use of the rental unit in September 2016. She submitted that the Landlord previously reduced the Tenant's rent for two of the months during this period of time and that the Landlords previous agreement to reduce the rent is a precedent for compensation.

In response to the Tenant's claims the Landlord testified that the rental house is a four level split. She testified that there are five bedrooms and 3.5 bathrooms.

The Landlord acknowledges that the two floods occurred and did not raise an objection to when the flooding occurred and the amount of time it took to repair the rental unit. The Landlord acknowledged that she previously compensated the Tenant by reducing the rent by 50% for August 2015, and September 2015.

The Landlord testified that she took immediate action to deal with the flooding. She called a plumber and had hired contractors to perform the necessary repairs. She testified that the Tenant went without a washer and dryer for 1 or 2 weeks. She testified that the Tenant only lost use of one bedroom and the bathroom in the basement.

The Landlord testified that the repairs to longer than expected because the Tenant was not cooperating with the efforts to have it repaired. She testified that she asked the Tenant to work it out with the contractors for entry into the rental unit, but the Tenant would change her mind and restrict the contractors' access into the unit.

With respect to the flood in 2016, the Landlord submitted that the Tenant was having difficulty paying rent on time and paid the rent late. On September 11, 2016, The Tenant sent the Landlord a text message informing the Landlord about a flood in the unit. The Landlord testified that she sent her son to the unit and pictures were taken. She submits that she called a plumber who went to the rental unit the next day at an arranged time but the Tenants were not there to let the plumber in. The Landlord testified that when the plumber got access later that day and the line was unblocked. The Landlord testified that on September 12, 2016, she called a clean-up crew to attend to cleaning up the flood. The Landlord testified that the Tenant refused access to the clean-up crew to enter the house and told them to come back the next day.

The Landlord provided documentary evidence of a letter from the plumber that states the Tenant was not home to let the plumber in at the arranged time.

The Landlord provided a letter from a restoration company that states the Tenant would not let the restoration company into the unit on September 12, 2016. The Letter indicates the Tenant let the company into the unit on September 13, 2016 after 9 am.

The Landlord provided a letter from an insurance adjuster that states the adjuster informed the insurance company that the contractors and sub trades were required to rebook appointments

with the Tenant at least 4 or 5 times causing the job duration to increase by 4 to 5 weeks. The letter indicates the carpet cleaners were turned away because the Tenant was having visitors.

The Landlord submits that the Tenants are responsible for some of the damage to the unit. The Landlord submits that the Tenants were asked to not use the water in the unit until the problem was identified. The Landlord submitted that the Tenants must have used the water which caused additional damage because the damage was greater than seen in the pictures her son took on the day of the flood.

The Tenant responded by testifying that she was cooperative with the repairs but she has children and did not want to leave her children in the house with strange people.

The Tenant testified that she did not use the water until the plumber told her it was ok to do so.

The Tenant testified that the restoration company showed up at 8 or 9 pm at night and her children were sleeping so she told them to return the next day.

Analysis

Residential Tenancy Policy Guideline #16 Claims in Damages states that if a Tenant is deprived of the use of all or part of the premises through no fault of their 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.

Section 7 of the Act states:

if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

With respect to the first flood, I find that the Tenants lost some use of rental unit. I find that the Tenant is entitled to some compensation for the loss of use of the basement area from July 2015, to November 13, 2015. The Tenant has already received some compensation from the Landlord for August 2015 and September 2015.

With respect to the second flood, there is insufficient evidence from the Landlord to prove that the Tenant is responsible for the flood. There is insufficient evidence that the Tenant contributed to the damage by continuing to use the water prior to the plumber stating it was ok. However, I find that flooding is an emergency type of situation and it is urgent for the preservation of the residential property to take immediate action to prevent additional damage.

I find that the Tenant did not do what was reasonable to minimize the damage or loss after the second flood because she refused to allow the remediation team into the basement to immediately start the clean-up. While I acknowledge the Tenant's testimony that her children were sleeping, the flood was contained to the basement of a four level home, which had bedrooms and bathrooms on the floors above. In the circumstances, due to serious nature of the situation and the risk to further water damage to the property, I find that the Tenant should have let the remediation team into the unit.

The rental unit contains three or four floors, 5 bedrooms and 3.5 bathrooms; I find that the Tenant was able to enjoy use of the rental unit above the basement including kitchen, bedrooms, bathroom facilities and other areas. There are three bedrooms and 2.5 bathrooms above the basement level. While the Tenant states she lost use of two bedrooms, and a bathroom, and had a disruption to laundry facilities, I do not find the Tenant's loss is compensable at 50% of the rent.

With respect to the first flood, I find that the Tenant caused a delay to the repairs of the rental unit. The Tenant submitted she was cooperative with the repairs; however, I prefer the evidence from the Landlord, and the third parties, that the Tenant caused delays to the completion of repairs. While I acknowledge that the Tenant did not feel comfortable allowing some contractors into the unit with her children present, I do not find that it reasonable that the Tenant should receive compensation for loss of use of the rental unit when the Tenant contributed to the delay of the repairs. I find that delays caused by the Tenant added 5 weeks to the completion of the repairs and I do not grant the Tenant compensation for this 5 week time period.

With consideration to my findings that the Tenant delayed repairs, and failed to minimize the damage or loss to the unit, and with consideration to the size of the home, I award the Tenant compensation in the amount of 15% of the rent paid which equals \$9.50 per day for loss of use of the rental unit. The 15% compensation only applies to the period of time that the Tenant is seeking compensation for within her Application. The Tenant is awarded \$532.00 as follows:

- For loss of use in July 2015; I award \$285.00 (30 days compensation)
- For loss of use in October 2015; I award no compensation due to delays
- For loss of use in November 2015; I award \$57.00 (6 days compensation)
- For loss of use in September 2016; I award \$190.00 (20 days compensation)

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful in her application, I order the Landlord to repay \$50.00 of the fee that the Tenant paid to make application for dispute resolution.

In total, I award the Tenant the amount of \$582.00. The Tenant is granted a monetary order in the amount of \$582.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenant suffered a loss of use of the rental unit due to flooding. I grant the Tenant a monetary order in the amount of \$582.00.

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 18, 2016

Residential Tenancy Branch