



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with a tenants' application for monetary compensation. One tenant and the landlord's agent participated in the in-person hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

On November 8, 2015 the landlord and the tenants signed an agreement for a tenancy to begin on November 15, 2015. The rental unit in question is the lower level of a house. The landlord had done several upgrades to the rental unit before the tenancy began. When the tenants began moving into the unit, they discovered that there was a flood in the rental unit. The parties agreed that the tenancy was frustrated due to the flood. The landlord did not cash the tenants' security deposit or rent cheque, and the tenancy ended.

Tenants' Claim

The tenants claimed monetary compensation of \$5,171.43 for the costs they incurred as a result of not being able to move into the rental unit.

The male tenant, JY, stated that when they viewed the rental unit there was a very old, outdated carpet in the unit with a very large water stain on it. The tenant stated that they asked the landlord to remove the carpet, but the landlord refused to do so.

When the tenants discovered the water leak, they called in a flood restoration company to do an inspection. The tenant stated that the restoration company's assessment was that the water had been present for a very long time. The tenant stated that when the landlord learned that the tenants had called a restoration company he became very upset and said that the deal was off and there would be no tenancy.

The tenant submitted that the landlord was aware that flooding had been occurring, which was why they did not want to remove the water-stained carpet. The tenant submitted that all of this evidence points to negligence on the landlord's part, and the landlord should therefore be responsible for the tenants' moving costs.

Landlord's Response

The landlord stated that there had been a heavy storm the week before the tenancy began, and after the flooding occurred they discovered that the water was in the soil surrounding the house and came in through cracks in the foundation.

The landlord stated that the owner did not want to replace the carpets because they were quite useable. The landlord stated that the tenants had seen the rental unit a couple of times before the flood occurred and there was no sign of flooding. The landlord stated that once they became aware of the flooding, they did replace the flooring.

The landlord stated that the flood was nobody's fault, and the landlord is not responsible for the tenants' costs, as it was a frustrated tenancy.

Analysis

Upon consideration of the evidence and on a balance of probabilities, I find that the tenants are not entitled to monetary compensation.

The tenants submitted that the flooding occurred because the landlord negligently failed to take steps to prevent such an occurrence. However, I find that there is insufficient evidence for me to determine that the landlord was aware there recently had been and would continue to be flooding, such that they were negligent in renting the unit to the tenants. I accept it as more likely than not that the flooding that occurred at the beginning of the tenancy was a result of the heavy rainfall that week, and the flooding caused the rental unit to be uninhabitable and the tenancy to be frustrated.

When a tenancy is frustrated, neither the landlord nor the tenant is responsible for fulfilling their obligations under the tenancy. The tenant is not responsible for paying rent or lost revenue for any time after the frustrating event, and the landlord is not responsible for the tenant's losses as a result of the event.

Conclusion

The tenants' application is not successful. I do not find negligence on the landlord's part. I find the tenancy was frustrated. The tenants' application is therefore 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: December 2, 2016

Residential Tenancy Branch