



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

A hearing was convened under the *Residential Tenancy Act* (the “Act”) to deal with the tenants’ application for compensation for loss or other money owed.

Both of the tenants attended the hearing, as did an agent for the corporate landlord. Both parties were given a full opportunity to be heard, to present documentary evidence, to make submissions, and to respond to the submissions of the other party.

Service of the tenants’ application and notice of hearing was not at issue.

Issues to be Decided

Are the tenants entitled to compensation?

Background and Evidence

This tenancy began in 2012. A copy of the tenancy agreement was in evidence. Monthly rent is currently \$1,245.00 and parking is an additional \$40.00 for two vehicles. A security deposit of \$600.00 was paid at the beginning of the tenancy and remains in the landlord’s possession.

It was agreed that there were two floods affecting the tenants’ suite and that the tenants were required to relocate for a period of time in each case (between 17 and 21 days total). It was also agreed that the floods were not caused by the tenants.

Although there was some dispute as to the number of days that the tenants were required to be away from the rental unit as a result of the second flood, the parties also agreed that the tenants had been refunded the appropriate amount of rent for the period of time that their rental unit was not habitable (\$875.00).

Accordingly, the tenants' claim was limited to the cost of the hotel accommodation (in amounts of \$4,637.64 and \$1,424.50 for the first and second floods, respectively) and the cost of insurance deductibles (in the amounts of \$200.00 and \$500.00 for the first and second floods, respectively). The tenants did not claim for the cost of increased premiums, although they testified that they were advised that their premiums would be increasing as a result of the fact that they had made two claims against their insurance over a short period of time.

The tenants testified that their insurance covered the cost of the alternative accommodations after both floods but that they were required to pay a deductible of \$200.00 after the first flood and of \$500.00 after the second flood.

They argued that because none of their personal belongings were damaged and because the floods were the result of events in the building in general or in other units, that the landlord's insurer should be covering the cost of accommodations.

They further testified that they have been advised by their insurer that if they repay the cost of the accommodations then their insurance premiums will not increase as a result of the claims, but if they do not, their premiums will increase. The tenants did not submit any evidence from their insurer in support of this and they did not have any specific information as to the amount of that increase over time.

The landlord in response submitted that if the tenants' insurer believes that the landlord's insurer should be responsible for the cost of the tenants' accommodations then the tenants' insurer should or can claim this amount from the landlord's insurer. The landlord also submitted that the tenants were advised to have insurance in the application to lease, which includes the following:

INSURANCE. Applicants are advised to carry adequate insurance coverage regarding their own property and liability. NOTE: Building insurance does not cover Tenants' personal property. Tenants should carry adequate insurance to protect themselves from loss resulting from their own negligence or willful neglect of that of their guests.

The landlord did not say tenancy agreement contains any provision with respect to insurance.

The landlord noted that the tenants had not submitted any evidence from their insurer to establish that if they repaid the cost of accommodations their premiums would not increase.

Analysis

Sections 7 and 67 of the Act establish that a party who does not comply with the Act, Regulation or tenancy agreement must compensate the other party for resulting damage or loss. It was agreed that the floods were not caused by the tenants and I find that the landlord has breached the tenancy agreement in that it was unable to provide the tenants with the use of the rental unit as agreed.

I further find that the tenants have suffered financial loss as a result of the breach.

Section 7(2) of the Act also provides that a party suffering a loss as a result of a breach is required to mitigate that loss. The tenants have properly done so by purchasing insurance, as is recommended in the application for tenancy. As the tenants' insurance has covered the actual cost of accommodation, the tenants' loss is limited to the amounts paid in deductibles (\$700.00 total). Although the tenants have not provided documentary evidence of these amounts, I accept the tenant's oral testimony that they have paid a total of \$700.00 in deductibles as result of the two floods.

However, I also find that by repaying the tenants an amount representing the number of days that the tenants were not able to reside in the unit, the landlord has already compensated the tenants for this loss. If I were to allow the tenants to recover the \$700.00 in insurance deductibles (which is effectively the amount the tenants paid for alternate accommodations) and allow them to retain their rent refund of \$875.00 the tenants would effectively be compensated for the same loss twice. Residential Tenancy Branch Policy Guideline #16 confirms that the purpose of compensation is to put the person who suffered the loss or damage in the position they would have been in had the breach not occurred.

I accept that the tenants were significantly inconvenienced on the two occasions when they were required to leave their home and reside in a hotel. However, inconvenience of this sort is not generally compensable under the Act.

The tenants have not claimed for the increased premiums they say that they will be required to pay over time, which may represent another loss arising from the landlord's breach of the tenancy agreement. The tenants have leave to reapply with respect to that claim.

Conclusion

Based on the above, I dismiss the tenants' application.

The tenants may reapply with respect to their increased insurance premiums.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 07, 2017

Residential Tenancy Branch