



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with the tenants application pursuant to the *Residential Tenancy Act* (the “Act”) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to the service of evidence.

Issues

Are the tenants entitled to compensation for loss and reimbursement of the filing fee?

Background and Evidence

The tenancy began on April 1, 2015. The current monthly rent is \$1240.00 and during the period subject to this dispute it was \$1200.00. The rental unit is a 2 bedroom condo on the third floor of a four floor building. There are 1 ½ bathrooms in the unit one being a full bath and the other just a toilet plus sink.

The tenant testified that in January 2017 there was a water leak from the ceiling above the bathtub. The landlord was notified. The strata management company placed a giant dehumidifier in the bathroom and another blower fan in the bathtub. The tenants were advised by the strata management company to not use the shower unless they are able to move the fan out of the bathtub. The tenant testified that both her and the other tenant have back problems so moving the fan was not possible. The tenants found a hotel at the best rate they could find for themselves and their dog. They were

not advised when the work was completed and had to contact the contractor themselves who advised the work had been completed. They stayed a total of 7 days in a hotel and are claiming the cost of the hotel for this period plus food related expenses incurred. When they returned to the rental unit, the bathroom was functional but there was still no ceiling which was repaired shortly after they returned. The tenant further submits that there was also a second fan in the bathroom which restricted access.

The landlord argues the tenants were not required to vacate the rental unit at all and the leaking ceiling was only a minor inconvenience. The landlord argues he was not made aware of any back issues which prevented the tenants from removing the fan out of the bathtub in order to utilize the shower. The landlord argues if he had been made aware of the back problems he could have requested the fan be placed outside the bathtub. The landlord further argues the second fan was not restricting access as there are two separate entry doors to the bathroom.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I find the tenants have not submitted sufficient evidence in support of their claim that the loss suffered occurred due to the actions or neglect of the landlord. In fact, the tenants own evidence was the landlord took steps to repair the rental unit soon after being advised of the leaking roof. I also find the tenants have submitted insufficient evidence for a finding that the bathtub or bathroom was no longer useable requiring them to find alternative accommodation for a period of 7 days. The tenants own submission was that she was advised the bathtub could still be used by lifting the fan out of the tub. The tenants did not submit any evidence in support of the alleged back problems or that they notified the landlord of such. I accept the landlord's testimony that alternative arrangements could have been made had he been notified of such. I also find that given the rental unit had an additional bathroom, the tenants would still have the unrestricted use of the secondary toilet and sink facilities. As such, I find the repair

work undertaken on the leaking ceiling and the installation of the fans in the bathroom were a minor inconvenience which did not require the tenants to vacate the rental unit.

The tenants claim for loss suffered as a result of hotel and food expenses is dismissed without leave to reapply.

As the tenants were not successful in this application, the tenants are not entitled to recover the filing fee paid for this application.

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: August 14, 2017

Residential Tenancy Branch