



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER SLEGG REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated May 8, 2017, as amended by an Amendment to an Application for Dispute Resolution, received at the Residential Tenancy Branch on May 19, 2017 (the "Application"). The Tenant applied the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- A monetary order for money owed or compensation for damage or loss; and
- An order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord was represented at the hearing by R.P. Also in attendance were the owners of the rental property, who did not participate in the hearing. No objections were raised. The Tenant and R.P. provided a solemn affirmation.

The Tenant testified that the Application package, amendment, and documentary evidence were served on the Landlord by registered mail. R.P. confirmed receipt.

A documentary evidence package submitted by the Landlord was received at the Residential Tenancy Branch on October 3, 2017. R.P. confirmed this document, which included additional terms and conditions of the tenancy agreement was not served on the Tenant. However, during the hearing, the Tenant confirmed she had a copy of the document with her records. I find there is no prejudice to the Tenant in considering the document submitted by the Landlord.

No issues were raised with respect to service or receipt of the above documents, and I find they were sufficiently served for the purposes of the *Act*, pursuant to section 71 of the *Act*. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to recover the filing fee paid to make the Application?

Background and Evidence

The parties agreed the tenancy began in 2014 and that the Tenant continues to occupy the rental unit. Rent is currently due in the amount of \$1,555.50 per month. The Tenant paid a security deposit of \$750.00 and a pet damage deposit of \$750.00, which the Landlord holds.

This dispute arose due to a flood that occurred in the rental unit on or about January 5, 2017, after which the Landlord has provided the Tenant with a \$1,500.00 rent concession. On behalf of the Landlord, R.P. indicated the rent concession was given to the Tenant because the Landlord recognized she was experiencing hardship due to the flooding. The Tenant stated on several occasions during the hearing that she does not know how the rent concession ought to be allocated and sought clarity on that issue.

The Tenant's claims were set out in a Monetary Order Worksheet, dated May 12, 2017. First, the Tenant sought to recover \$769.46 she paid to stay in hotels for four nights, following the flood. The Tenant testified the rental unit was uninhabitable in the immediate aftermath of the flood, in part due to noise caused by the operation of dehumidifiers and blowers being used to dry the rental unit.

In reply, R.P. acknowledged that the flood occurred as claimed. However, the Landlord relies on the provisions of the tenancy agreement, which state:

4. The tenant agrees to obtain 'renter's insurance'.

...

8. The landlord is limited in liability in the event this contract is frustrated due to fire, flood, earthquake, or any event that would render the property uninhabitable. That limitation, or extent of liability by the landlord to the tenant, is for the "loss of use" only and the return of any rental monies paid by the tenant prior and up to the the time that the loss of use occurred.

[Reproduced as written.]

Second, the Tenant claimed \$295.67 for BC Hydro consumption that she testified was increased due to the use of dehumidifiers, blowers, and other equipment use to repair the flood damage. The Tenant provided a hand-written worksheet showing her calculations but was unable during the hearing to confirm the source of the numbers relied upon.

In reply, R.P. referred to a graph that appeared on a BC Hydro invoice, billing date March 28, 2017. The graph suggested consumption was lower in early 2017 than in 2016. The Tenant attributed this to her use of a wood-burning fireplace to deal with moisture and mold in 2016. R.P. repeated the Landlord's reliance on the term of the tenancy agreement which required the Tenant to obtain insurance.

Third, the Tenant claimed \$191.34 for emergency meals. She testified she had to purchase food and could not make meals in the home. Receipts were provided in support.

In reply, R.P. testified that the Tenant and her family would have had to eat in any event. R.P. repeated the Landlord's reliance on the term of the tenancy agreement which required the Tenant to obtain insurance.

Fourth, the Tenant claimed \$96.78 for loss of use and loss of quiet enjoyment for two days on March 6 and 7, 2017. The amount claimed was reduced to \$48.39 during the hearing. The Tenant suggested that a \$1,500.00 rent concession previously provided by the Landlord compensated her for a 50% reduction from January 5 to March 5, 2017, but that she is entitled to two further days. A hand-written calculation was submitted with the Tenant's evidence.

In reply, R.P. repeated the Landlord's reliance on the term of the tenancy agreement which required the Tenant to obtain insurance.

Fifth, the Tenant claimed \$500.00 for loss of time and stress caused because of the flood. She testified that the flood and remedial work in her rental unit has been stressful. Specifically, the Tenant stated that getting clarity from the Landlord has been difficult, that having to clean up after tradespeople, and that she felt she was not heard during the remediation process. The Tenant also stated she is still confused about the \$1,500.00 rent concession and what it was applied to.

In reply, R.P. disagreed with this and all other aspects of the Tenant's claim. He testified the Tenant has been amply compensated and should have obtained insurance to protect her from such losses.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

After careful consideration of the evidence and submissions, I find that the Tenant's Application must be dismissed. There are several reasons for making this finding. First, the tenancy agreement required the Tenant to obtain insurance. Even if this provision not been included in the tenancy agreement, landlords are not the insurers of tenants. Second, there was insufficient evidence before me that the flooding was caused due to a violation of the *Act*, regulations, or a tenancy agreement. Third, the rent concession provided by the Landlord was more than what I would have found the Tenant to be entitled to. Finally, I note again that the Tenant stated on several occasions that she was confused by and required clarity with respect to the \$1,500.00 rent concession given by the Landlord. It appears the Tenant is uncertain with respect to not only the nature of her claim, but also the value of her loss.

The Tenant's Application is dismissed, without leave to reapply.

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: October 11, 2017

Residential Tenancy Branch