



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDCT MNSD FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to obtain a return of the security deposit pursuant to section 38;
- a monetary award for damages and loss pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing, represented by counsel and were given a full opportunity to be heard, to present sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution, amendment to the application and evidentiary materials. The tenant confirmed receipt of the landlord's evidence. Based on the undisputed testimonies of the parties I find that the parties were each served with the respective documents in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the tenant withdrew the portion of their application seeking a return of the security deposit.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the tenant's claims and my findings around each are set out below.

This tenancy began in March, 2016 and ended on November 30, 2017. The monthly rent was \$1,430.00 payable on the first of each month. A security deposit of \$715.00 was paid at the start of the tenancy. The tenant provided their forwarding address at the same time as giving their written notice to end tenancy by letter dated October 25, 2017.

There was water damage caused to the rental unit arising from a pipe in a neighboring unit bursting on July 16, 2018. The tenant submits that the water ingress caused damage to personal belongings and furniture. The tenant testified that the landlord offered alternate accommodations while repairs were being made to the rental unit but the suggestion was unsuitable. The tenant instead found temporary accommodations for the period while he could not reside in the rental unit. When the tenant was informed that the repairs were complete and returned to the rental unit they became concerned about the quality of the work and the possibility that residing there could pose a health risk. The tenant decided to give notice and end the tenancy.

The tenant seeks a monetary award for damages and loss which includes the rent paid for the alternate accommodations while repairs were being done, the travel cost to work from the alternate accommodations, the cost of replacement for personal items, unused utilities, moving and storage costs as well as aggravated damages for the stress caused by the landlord.

The landlord submits that they took reasonable steps at all times. The landlord testified that when they were informed of the water damage they reported the issue to the neighboring unit and the building management to have repairs performed. The landlord said that while they were not informed that the rental unit was uninhabitable they offered the tenant the use of another suite in the rental building while repairs were being completed. The landlord said that the restoration companies informed them when repairs were completed and the information was relayed to the tenant.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that there is insufficient evidence that any of the losses claimed by the tenant to arise from any action or negligence on the part of the landlord. The undisputed evidence is that the damages originated from a plumbing issue in a neighboring rental unit that is not owned or managed by the landlord. When the issue was reported the landlord took action and arranged for repairs. The evidence is that the landlord offered the tenant temporary accommodations while restoration work was being performed. The landlord testified that they were informed by the restoration workers that the rental unit was uninhabitable but they chose to make the offer to the tenant anyway. I find that the landlord took more than reasonable steps by offering the tenant another unit when it was not necessitated by the work scheduled. I find that by refusing the landlord's offer and choosing to find their own accommodations in a hotel the tenant has failed to act reasonably in mitigating their losses.

I find the tenant's submission that even after the rental unit was repaired they could not inhabit it due to their concerns about their health to be unreasonable. I find that there is insufficient evidence to conclude that the repairs to the rental unit were inadequate or that there were deficiencies which were not properly addressed. I find that the tenant's concerns about their own health arising out of their preexisting condition to be irrelevant. While the tenant may have felt concern, I find based on the evidence that the landlord acted reasonably, professionally and met their duty under the *Act*.

As I find that there is no action or negligence on the part of the landlord which gives rise to the losses claimed by the tenant, I find that there is no basis for a monetary award. The tenant's application is accordingly dismissed.

Conclusion

The tenant's application is dismissed in its entirety 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: July 18, 2018

Residential Tenancy Branch