



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: MNDCT, FFT

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$1594.61
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered including photos, letters and other documents. Further the tenant produced a 4 page memorandum setting out the law.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord as the landlord acknowledged service. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on July 1, 2017 and end on June 30, 2018. The tenancy agreement provided that the tenant(s) would pay rent of \$1400 per month payable in advance on 30th day of each month. The tenant(s) paid a security deposit of \$700 at the start of the tenancy.

On December 24, 2018 the tenant experienced a flood caused by a burst pipe making the rental unit uninhabitable. The parties agreed in writing to end the tenancy at the end of December 2017. The tenants vacated the rental unit on that date. The landlord has accepted responsibility for the tenant's claim of reimbursement of the last 7 days of rent.

In addition the tenant testified that the high humidity in the rental resulted in the growth of mould which damaged clothes and shoes. The tenant claims the sum of \$1232.11 being the depreciated value of the shoes and clothes that the tenants had to dispose of.

The tenant gave the following testimony:

- When she inspected the rental property in June there was no indication of a high humidity/mould problem.
- The tenant produced photos showing mould damage to clothes and shoes.
- In August she became aware of the high humidity and she purchased a de-humidifier to deal with the problem.
- The problem persisted. She produced a text message dated September 4, 2018 sent to the landlord's agent showing the mould on the clothes and requesting the landlord's assistance in dealing with the problem. She further testified she brought the problem to the landlord's attention approximately 10 times either by telephone or in person when the landlord collected the rent.
- The landlord failed to deal with the problem and the mould problems continued. They suggested to her that she should open the windows.
- The tenant produced a 4 page document showing comparable clothes and shoes taken from the internet and reducing the amounts by 20% to 50% for depreciation.

The landlord gave the following evidence:

- There is no evidence of a moisture problem in the rental property
- Other tenants have lived there before and after without experiencing a moisture problem.
- He requested that the Strata do an inspection. They conducted an inspection and concluded there was no mould problem.
- He has been unable to find a source which would cause excessive moisture leading to mould damage.
- The tenant failed to provide receipts to prove their monetary claim.
- The tenant failed to carry tenant's insurance when suggested by the landlord.

The tenant responded saying she was never advised to obtain tenant's insurance.

Analysis

With regard to each of the Tenant's claims I find as follows:

- a. The landlord did not dispute the tenant was entitled to \$362.50 for reimbursement of rent paid for the last 7 days of December. A burst pipe made the rental unit uninhabitable. The parties in writing to end the tenancy at the end of December but the tenant received very little value for the last 7 days. I determined the tenant has established a claim of \$362.50 for reimbursement of the rent for the last 7 days of December.
- b. The tenant claimed the sum of \$1232 for damage to clothes and shoes.

Section 32(1) of the Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant

Policy Guideline #16 includes the following:

16. Compensation for Damage or Loss

B. DAMAGE OR LOSS

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and

- damage to a person, including both physical and mental.

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

After carefully considering all of the evidence and the submission of the parties I find as follows:

- I determined the approach of the tenant in determining their loss by use of the internet and then applying a depreciation factor to each of the items was reasonable. However, the tenant failed to provide evidence in the form of receipts to prove that she has in fact purchased replacement goods for the items claimed. After considering in all of the evidence I determined that it was reasonable to assess the loss suffered by the tenant amounts \$1000 and not the \$1232 claimed. .
- I am satisfied there was a moisture problem in the rental unit that was not caused by the Tenant. Further I am satisfied that the landlord failed to respond to the tenant's concern in a timely manner. There is a text message which indicates that the landlord was advised in early September and perhaps earlier than that. However, I determined the tenant failed to respond sufficiently in taking steps to move her belongings from an area which was causing damage and therefore failed to properly mitigate. As a result I determined the parties share responsibility equally and the tenant is entitled to \$500 for this claim.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$862.50 plus the sum of \$100 in respect of the filing fee for a total of \$962.50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 18, 2018

Residential Tenancy Branch