



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, ERP, PSF, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to complete emergency repairs to the rental unit, pursuant to section 33;
- an order requiring the landlord to provide services or facilities required by law, pursuant to section 65; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The female tenant did not attend this hearing, which lasted approximately 70 minutes. The male tenant ("tenant"), the landlord and the landlord's agent attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant confirmed that he had permission to represent the female tenant and the landlord confirmed that his agent had permission to represent him, at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with landlord's written evidence package. Both parties confirmed they had no objections to the other party's evidence and indicated they were ready to proceed with the hearing.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenants' application to correct the spelling of the landlord's first name. The landlord consented to this amendment during the hearing.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to complete emergency repairs to the rental unit?

Are the tenants entitled to an order requiring the landlord to provide services or facilities required by law?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on March 1, 2018. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The rental unit is the upper unit of a two-storey house with a basement. The tenants are currently living outside of the rental unit, with only some possessions left in the unit and most of their possession currently in storage.

During the hearing, the tenant reduced the tenants' monetary claim from \$3,500.00 to \$2,158.85. The tenants request that the landlord finish repairing the rental unit so that they can move back in. They also seek to recover the \$100.00 application filing fee.

The tenant testified that a fire occurred in the basement of the rental property on November 19, 2018. He said that there was smoke, he saw fire coming out of the wall, and he kicked a hole in the wall and put the fire out with some water. He stated that he waited for the fire department and he found out that there were issues with the electricity power and wiring that caused the fire. He said he did not know if the landlord caused the fire and he was not told that the landlord caused the fire by the fire department or the insurance company. The tenant claimed that the insurance company declared the entire house unfit to live in because there were electricity wires everywhere.

The tenant explained that the tenants left the rental unit on November 23, 2018, stayed in a hotel for 9 days, and then began living at a friend's place as of November 30, 2018. The tenants produced receipts for \$1,067.85 for the hotel for 7 days, indicating that the landlord paid for the remaining 2 days. They produced a receipt for \$806.00 for moving out of the rental unit and \$285.00 for storage of their items. The tenant confirmed that the tenants did not purchase any tenants' insurance for the rental unit.

The landlord disputes the tenants' claims. He said that the fire was not his fault, as he did not cause it. He produced a fire investigation letter, dated December 12, 2018 ("letter"), that was sent to his insurance company. He explained that he paid for some of the tenants' food, gas, generator and hotel costs, even though he was not required to do so and he was not responsible for their losses.

The landlord's agent confirmed that he was the liability adjuster for the insurance company that insures the landlord's rental property. He said that a fire occurred on November 18, 2018, and that his company hired an investigator to find the cause of the fire to see whether the landlord was responsible in any way. He referenced the letter, indicating the fire investigator who wrote it is a professional and has appeared in court and been involved in litigation.

The landlord's agent explained that the fire was a "freak occurrence" that happened because of a "floating neutral" where voltage was "flip-flopping" and causing problems to the rental property and other neighbouring properties. He stated that an electricity transformer provided too much electricity and the rental unit was hit harder because the circuit in the basement was the path of least resistance, taking the biggest hit. He said that there were no previous issues with the wiring at the rental property, as per the investigation. He maintained that no wiring would have been able to handle this type of electricity issue. He testified that the water pump that runs on the same circuit got

damaged as well so the entire rental property was not habitable because the water and power still cannot be hooked up. He said that he does not know when the house will be habitable again, as this was the department of the property adjuster in the same insurance company.

The landlord's agent testified that he has worked with both tenants and landlords in insuring their property. He explained that if the tenants had purchased tenants' insurance, their "alternative living expenses" for any costs in addition to rent, due to the fire, would have been covered by the insurance company. He said that the tenants' food, storage, moving expenses and other costs would have been covered.

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 applicants to establish the claim. To prove a loss, the applicant tenants must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord 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 tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

I dismiss the tenants' application for a monetary order for \$2,158.85 without leave to reapply. I find that the tenants failed to prove part 2 of the above test, to show that the fire and resulting losses were due to the actions or neglect of the landlord.

The tenants failed to show that the landlord was responsible for the fire. I find that the landlord dealt with the fire incident as soon as reasonably possible by having his insurance company investigate and then repair the damages. There was no allegation by the tenants that the landlord delayed in responding to the situation. The landlord's agent testified and confirmed through the letter from the fire investigator, that the fire was not the fault of the landlord. The fire was due to an electricity transformer providing too much electricity to the area, which resulted in a heavier surge to the rental unit. The landlord's agent confirmed that there were no issues with faulty wiring in the rental unit, that would be the fault of the landlord. The tenants failed to obtain tenant's insurance,

which the landlord's agent said would have covered their losses being claimed at this hearing for moving, storage and accommodation. The landlord paid for some of the tenants' expenses that he was not required to do so. I find that the landlord is not responsible for the tenants' losses.

I also dismiss the tenants' application for emergency repairs and for services and facilities to be provided. The landlord and his agent do not know when the rental unit will be habitable. It is outside of the landlord's control, as a third party is restoring the rental unit.

As the tenants were unsuccessful, I find that they are not entitled to recover the \$100.00 filing fee paid for their application.

Conclusion

The tenants' entire 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: December 20, 2018

Residential Tenancy Branch