



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 was convened as a result of the Tenants' Application for Dispute Resolution, made on November 28, 2018, (the "Application"). The Tenants applied for the following relief, pursuant to the Residential Tenancy Act (the "Act"):

- an order that the Landlord return all or part of the security deposit;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenants as well as the Landlord attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenants testified that they served their Application and documentary evidence package to the Landlord by registered mail on November 30, 2019. The Landlord confirmed receipt. The Landlord testified that he served the Tenants with his documentary evidence by registered mail on March 11, 2019. The Tenants confirmed receipt. Pursuant to section 88 and 89 of the Act, I find the above documents were sufficiently served for the purposes 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.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to the return of their security deposit, pursuant to Section 38 of the *Act*?
3. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy started on August 1, 2016. During the tenancy, rent in the amount of \$1,550.00 was due to the Landlord each month. The Tenants paid a security deposit in the amount of \$775.00 which the Landlord continues to hold. The tenancy ended on November 30, 2018. The Tenants provided the Landlord with their forwarding address as part of their Application package.

The Tenants testified that they experienced a flood in their rental unit on October 25, 2018 which was a result of a sewage drain blockage. The Tenants testified that a plumbing company attended and it was discovered that the issue was associated to the neighbouring duplex.

The Landlord testified that the flood on October 25, 2018 had minimal impact to the rental unit. The Landlord testified that the plumbing company provided the Landlord with a quote on October 26, 2018 to repair the blockage. The Landlord stated that the recommended work took place on November 7, 2018. The Landlord submitted copies of the work orders and receipts in support.

The Tenants testified that on November 14, 2018 they experienced another sewage drain issue which was greater than the previous one. The Tenants indicated that the entire basement of their two level rental unit had flooded with sewage. The Tenants testified that Remediation Company deconstructed the basement, turned off the water to the rental unit and the Tenants were unable to use the basement of their rental unit.

As a result, the Tenants felt as though they could not continue their tenancy and sent the Landlord an email on November 22, 2018 expressing their intent to end the tenancy on November 30, 2018. In the email, the Tenants also indicated that rent was paid in full for November 2018 and that the Tenants would not request the return of their security

deposit or back rent if they could all agree to the tenancy ending on November 30, 2018. The parties agreed that the tenancy ended on November 30, 2018.

The Tenants are now seeking the return of their November 2018 rent, as well as \$1,200.00 for two mattresses and \$500.00 for bedding that was damaged as a result of the flood.

The Tenants are also seeking the return of their security deposit in the amount of \$775.00. The Tenants testified that they served the Landlord their forwarding address as part of their Application package in preparation for this hearing.

The Landlord testified that the Tenants still had use of the main living area upstairs in the rental unit and that the loss of water was only temporary. The Landlord stated that he doesn't think that the flood should have caused the tenancy to end and that the Tenants' were obligated to pay rent for November 2018. Furthermore, the Landlord felt entitled to retaining the security deposit as a result of the tenancy ending early.

Lastly, the Landlord doesn't think he should be held responsible for the damage caused to the Tenants bed and bedding as he could not have foreseen that the flood would have occurred and did everything that was suggested to him following the first flood to repair the issue, as soon as possible.

Analysis

Based on the documentary evidence before me for consideration 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. Pursuant to Residential Tenancy Policy Guideline #16 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 Tenants 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 Tenants must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

The Tenants are seeking the return of rent for November 2018 in the amount of \$1550.00 as a result of the flood which occurred on November 14, 2018. The Tenants are also seeking the return of their security deposit in the amount of \$775.00.

I find that in the Tenants own submissions they provided a copy of an email sent to the Landlord on November 22, 2018 expressing their intent to end the tenancy on November 30, 2018. In the email, the Tenants also indicated that rent was paid in full for November 2018 and that the Tenants would not request the return of their security deposit or back rent if they could all agree to the tenancy ending on November 30, 2018. I accept that the parties agreed that the tenancy ended on November 30, 2018.

As a result, I find that the Tenants have agreed to forfeit their security deposit as well as their right to claim for November 2018 rent as indicated in their agreement contained in their email to the Landlord.

The Tenants are also claiming for monetary compensation relating to the replacement of two mattresses in the amount of \$1,200.00 as well as bedding in the amount \$500.00 which were damaged in the flood.

I find that the Landlord took reasonable steps to repair the issue which contributed to the first flood in a timely fashion. I find that the Landlord could not have anticipated the second flood to the rental unit. I find that the Tenants have provided insufficient evidence that the Landlord breached the Act, regulation or tenancy agreement. As a result, I dismiss their claim for compensation for the replacement of the mattresses and

bedding. Should the Tenants have insurance coverage, they are at liberty to contact their insurance company for such claims.

Having been unsuccessful in their Application, I find the Tenants are not entitled to recover the filing fee paid to make the Application.

Conclusion

The Tenants agreed to forfeit their security deposit and not seek the return of November 2018 rent with the Landlord, in exchange for a mutual agreement to end tenancy early. The Tenants must abide by this agreement. The Tenants have also provided insufficient evidence to demonstrate that the Landlord breached the Act. As such, I dismiss the Tenants Application 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: April 4, 2019

Residential Tenancy Branch