



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking a monetary order for compensation and the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be Decided

Is the tenant entitled to compensation?

Background and Evidence

The tenancy started in 2005 and ended on March 31, 2017. The rent at the end of tenancy was \$755.00 payable on the first of each month. The tenancy ended pursuant to notice to end tenancy for non-payment of rent which was served on the tenant on January 12, 2017.

These parties have attended at least two hearings prior to this one. The hearings were conducted on March 01, 2017 and October 10, 2017. Both parties had made application both times.

The hearing on March 01, 2017 addressed the landlord's application for an order of possession and for a monetary order for unpaid rent. The landlord was successful in her application. The tenant had applied for a monetary order for damages and it was dismissed with leave to reapply.

The second application for dispute resolution was also made by both parties, after the tenancy ended. Both parties applied for monetary orders. The landlord was granted her claim which was offset against the security deposit that she was holding. The tenant applied only for the return of the deposit. Despite having been given leave to apply for compensation, as per decision dated March 01, 2017, the tenant did not do so.

On March 31, 2019, two years to the day after the tenancy ended the tenant chose to apply for compensation for the cost of a new mattress, for the loss of quiet enjoyment and for the recovery of the filing fee.

The tenant stated that on November 15, 2015, she reported a leak in her bedroom to the landlord. On that day she also reported a leak in the second bedroom and living room which was a result of rain coming through the windows.

The landlord stated that she responded to the tenant's complaint and found that a refrigerator on the upper floor was leaking. The landlord replaced the appliance. However, shortly after the tenant reported a second leak and the landlord found that the dishwasher on the upper level was leaking. The landlord stated that she cut off the water supply to the dishwasher and it was not in use from that time on.

Regarding the next reported leak, the landlord stated that there was a rain storm and the house being 94 years old, was inefficient at keeping the rain out. The landlord stated that she had the windows caulked as soon as the weather permitted.

The tenant stated that due to the leaks she suffered a loss of quiet enjoyment as there were multiple leaks for 14 months of the tenancy. The tenant testified that the landlord did not respond in a timely manner to her complaints and as a result she had several sleepless nights with a bucket collecting water in her bedroom. The tenant also stated that there were times when she returned home to a wet bed and had to sleep on the couch. The tenant stated that the multiple leaks ruined her mattress.

The tenant is claiming a total of \$2,731.10 as compensation for the loss of quiet enjoyment. The tenant stated that she arrived at this figure based on the square footage of the bedroom.

The tenant testified that the first leak took place in November 2015 and the last one was in December 2016. The tenant agreed that she continued to live in the rental unit despite the leaks and stated that she did so because she enjoyed living in the unit.

The landlord responded by saying that she addressed all complaints in a timely manner and visited the unit multiple times to follow up on the repair work. The landlord stated that she never saw a bucket collecting water or a ruined mattress. The tenant argued that she pointed the mattress out to the male landlord, but he did not bother to take a look.

The tenant agreed that she continued to use the mattress right through the tenancy and then transported it to her parents' home. The tenant stated that on March 31, 2017, she moved from the rental unit to her girlfriend's home where she rented a room and used a different mattress that she had borrowed from her parents, while her water stained mattress was stored in her parents' garage. The tenant added that on April 01, 2018, she moved out of her girlfriend's home to rental unit that she was occupying at the time of the hearing.

The tenant stated that on April 01, 2018, she moved all her items from her girlfriend's home to the new rental unit, including the mattress that she had borrowed from her parents. As per the invoice filed into evidence, the tenant had purchased a new mattress on March 07, 2018 and had it delivered to her parents' home on April 01, 2018. I asked the tenant why it was delivered to her parents' home when she had moved to a new rental on April 01, 2018. The tenant responded by saying that the reason for doing so was that the cost of delivery of the new mattress included the removal of the old mattress and the old mattress that was water damaged from the multiple leaks was at her parents' home and therefore it would be a convenient way of disposing of it.

The tenant filed photographs of a mattress that has some water stains. She stated that the photographs were taken the day she moved out of the dispute rental unit but were not taken inside the rental unit. The tenant stated that the photographs were taken in her father's garage where the mattress was stored until it was picked up by the company who delivered the new mattress.

In her written submission, the tenant included a statement from her father that mentioned that the photographs of the tenant's old mattress were taken in front of his garage right after it was moved from the dispute rental unit. The statement also says that it was never used by the tenant and was stored in his garage until it was picked up by the local city municipality. The photographs show the mattress lying on a carpet when the photograph was taken.

This implies that the photographs were not taken in front of a garage because on a balance of probabilities it is more likely than not that the front of the tenant's father's garage was not carpeted.

The tenant then changed her version of events and stated that the water damaged mattress was picked up by the City and that the delivery personnel picked up a different old mattress that belonged to her parents.

The tenant also added that later that same day (April 01, 2018) her brother transported her new mattress to her rental unit and picked up the mattress that her parents had loaned her and returned it to her parents.

The tenant is claiming \$1,859.13 for the cost of the new mattress she purchased to replace her water stained mattress.

Analysis

Loss of quiet enjoyment - \$ \$2,731.10

Based on the testimony of both parties, I find that the problems presented by the tenant for which she is requesting compensation, started in November 2015, when the landlord allegedly did not respond to her complaints in a timely manner. The tenant stated that the leaks eventually stopped in December 2016. Despite the leaks and the problems that the tenant stated she was having, the tenant continued to occupy the rental unit, without making application for dispute resolution. The tenant had the option to move out with 30 days' notice or make application for an order directing the landlord to fix the leaks that were causing the tenant to lose quiet enjoyment of the rental unit.

In addition, the tenant made an application for the return of the security deposit on in October 2017 but failed to add a claim for compensation.

The tenant has made her claim for compensation two years after the tenancy ended and four years four months after the start of the leaks from the upper floor.

Regarding the tenant's claim for the loss of quiet enjoyment, I accept the landlord's evidence that she responded to the tenant's complaints in a timely manner. If the tenant was unable to enjoy the premises due to a leaky ceiling, she had opportunity to end the tenancy or make application for an order directing the landlord to carry out repairs. The tenants chose not to make application for dispute resolution and continued to occupy the rental unit for a further four years and four months. The tenant testified that she enjoyed living in the rental unit and therefore did not want to end the tenancy.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to apply for an order directing the landlord to carry out repairs and continuing to occupy the rental unit for 11 months with the alleged leaks, pursuant to the doctrine of laches, I find that the tenant has not proven a loss of quiet enjoyment and this aspect of the tenant's application must hereby be dismissed.

Cost of mattress - \$1,859.13

Based on the testimony of the tenant, I find that she contradicted herself multiple times during the hearing. In addition if her mattress was water damaged and unusable, the tenant would have purchased a new mattress immediately. By her own admission she continued to use the allegedly damaged mattress for the remainder of the tenancy and even transported the mattress to her parents' home at the end of tenancy. The tenancy ended more than two years after the leaks started.

The tenant also stated that she took photographs of the mattress after she had moved it to her father's garage. The photographs show that the mattress was placed on a carpet when it was photographed. The tenant's father stated that the damaged mattress was picked up by the City while the tenant stated that it was picked up by the delivery personnel who delivered her new mattress.

Later during the hearing, the tenant changed her testimony to confirm her father's written statement that the water stained mattress was picked up by the local municipality.

The new mattress was purchased on March 07, 2018 and delivery was booked for April 01, 2018. The tenant moved to her new rental unit on April 01, 2018 but had the mattress delivered to her parents' home that same day. I find that if the mattress was for the use of the tenant she would have had it delivered to her new rental.

The above is one example of the tenant's testimony which I found was not credible. I also found that the remainder of the tenant's testimony contained inconsistencies. In addition the tenant made this application for the cost of a new mattress two years after the tenancy ended and one year after the purchase. The tenant had the option of making a claim for the mattress in her application that was made after the tenancy ended but chose not to do so.

For all the reasons stated above, I dismiss the tenant's application for the cost of a new mattress.

Overall, I find that the tenant has not proven her claim and therefore must bear the cost of filing her application.

Conclusion

The tenant's application is dismissed in its entirety.

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: June 24, 2019

Residential Tenancy Branch