



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNRT

Introduction

The Application for Dispute Resolution filed by the Tenant seeks a monetary order in the sum of \$2000 and 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.

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 by mailing, by registered mail to where the landlord carries on a business on April 7, 2019. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issue to be decided are as follows:

- Whether the tenant is entitled to a monetary order and if so how much?
- 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 April 1, 2018, end on March 31, 2019 and become month to month after that. The rent was \$1700 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$850 at the start of the tenancy.

The tenant gave the following evidence:

- The tenant testified that on Dec 7th, 2018, the toilet in the bathroom was not functioning properly. She advised the landlord of the problem. There is an

exchange of e-mails between the parties. The landlord advised the tenant that the owner of the property was initially blamed the tenant for causing the blockage and the owner was not prepared to pay the cost of fixing the blockage.

- The tenant testified she moved into an air bnb on December 16, 2019. The tenant failed to provide receipts from her stay at the air bnb although thought she produced a copy of two e-mail transfers each in the sum of \$1000. She testified she stayed there for 20 nights.
- The tenant acknowledged she was told that she could flush the toilet by pouring water into the bowl but she was never told how much water was necessary.
- The tenant testified she had a copy of an email for Absolute Plumbing dated December 28, 2018 which states the tenant could not have caused the problem. Neither the tenant nor the landlord provided a copy of that e-mail
- The tenant testified she felt that she had no other choice but to move to alternative accommodation until the problem had been fixed.

The landlord gave the following evidence.

- The problem was reported on December 7, 2018. The owner was initially not willing to pay for the problem to be fixed. Eventually the owner agreed to pay the cost of the repair and this was communicated to the tenant around the middle of December.
- Upon investigation determined that it was necessary to obtained part to get it fixed.
- The tenant was told that the toilet could operate by pouring water into the toilet bowl.
- She was also told that she could hire her own technician and get the landlord to reimburse her if it was not her fault.
- The landlord testified the parts arrived on January 8, 2019. When the plumber contacted the tenant she told the plumber it was no longer necessary as the problem had resolved itself.

Analysis:

The evidence provided by both parties was not satisfactory. Neither party presented sufficient evidence as to the cause of the blockage. The parties failed to provide sufficient evidence relating to the e-mails between the two of them and failed to provide evidence from the plumber who inspected it. .

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;
- ...

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.

Section 7 of the Residential Tenancy Act provides as follows:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

While the evidence was not satisfactory an arbitrator must do the best he/she can do with the evidence presented. I made the following determinations:

- There was a problem with the toilet that occurred on December 7, 2018. The tenant advised the landlord of this problem on that date. The owner initially refused to take responsibility to fix it. Some time around the middle of December the owner agreed to pay the cost of a plumber.
- The tenant lived in the rental unit from December 7, 2018 to December 15, 2018. She did not move to alternative accommodation until December 16, 2018.
- The tenant testified she lived in the alternative accommodation for 20 days. However, she failed to provide satisfactory proof of this. She provided evidence that she sent two separate e-mail transfers to someone each in the sum of \$1000 but it is not apparent on the face of that evidence what that was for.
- The landlord's plumber looked at the problem and determined new parts were necessary. The parts were purchased and when the plumber contacted the tenant on January 8, 2019 she advised that the problem had resolved itself and it was not necessary for the plumber to attend.

After carefully considering the evidence I determined the tenant has failed to prove that she is entitled to \$2000 for the cost of an Air BnB for the following reasons:

- The tenant has the burden of proof to establish her claim on a balance of probabilities. The tenant failed to provide sufficient evidence that she made the payment for an air bnb. She failed to provide a receipt. I determined the e-mail transfer is not sufficient proof.
- I determined that even if the tenant was able to prove she actually paid this sum to someone who had an air bnb the tenant failed to prove that she acted reasonably to mitigate or lessen her loss as required by section 7 of the Act. The tenant lived in the rental unit for 7 days after reporting the problem. The tenant could have hired her own technician to make the repairs which would have been much less expensive than the \$2000 she is now claiming. There was evidence presented that the cost of a technician was between \$300 and \$500.
- The tenant failed to provide sufficient evidence as to when she became aware that the problem had resolved itself. The landlord submits it is strange that the tenant only advises the landlord the problem has been resolved at a time when the plumber wishes to gain access to the rental unit to make the fix.

However, I determined the Tenant's enjoyment of the rental unit was reduced by the lack of a fully functioning toilet. I am satisfied the toilet was not fully functioning for

period from December 7, 2018 to the end of December 2018 and this caused inconvenience. In the circumstances I determined the tenant is entitled to compensation in the sum of \$400.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$400 plus the sum of \$100 in respect of the filing fee for a total of \$500.

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 both 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: July 08, 2019

Residential Tenancy Branch