



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE MAPLE RESIDENCES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFT, MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67; and
- an order authorizing the tenant the recovery of the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant was represented by her daughter who is the executor of her estate. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for loss under the Act, regulation or tenancy agreement?

Is the tenant entitled to the recovery of the filing fee?

Background, Evidence

The executor for the tenant's estate gave the following testimony. JP testified that her mother was paying \$2900.00 per month in rent. JP testified that on July 3, 2018 her mother was responsible for some water damage occurring in the unit. JP testified that her mothers insurance company gave the landlord their approval to conduct repairs and to forward the bill to them, however the landlord did not conduct those repairs until after

her mother passed away in late October 2018. JP testified that she gave notice on October 31, 2018 that the unit would be vacated and cleaned on that same day. JP testified that if the landlord had conducted the repairs when they had been approved, they could have easily rented the unit and not incur any loss. JP testified that she is seeking to recover the rent that was paid for November 2018 in the amount of \$2900.00 as well as the 100.00 filing fee for this application for a total monetary award of \$3000.00

RP gave the following testimony for the landlord. RP testified that the landlord was able to rent the unit for December 1, 2018 but did incur a loss of revenue for November 2018. RP testified that the tenant's daughter gave only one day's notice that the tenancy was over and that it was not possible to clean and do some of the minor repairs to prepare the unit. RP testified that in addition to preparing the unit, the incoming tenant also had to give one months notice to end their tenancy and therefore couldn't take over the unit. RP testified that the tenant failed to give the required notice and therefore the November 2018 pre-authorized payment was taken for the rent.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

JP submitted that water damage was the reason for the delay in renting the unit. RP refuted that claim and submitted that it had to do with the new tenant having to give one months notice and that the unit required some minor cleanup and repairs, not insurance related repairs. JP did not provide sufficient evidence to show that the delay was caused because of the insurance claim.

Section 45 of the *Act* addresses the issue before me as follows:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the JP's own testimony acknowledging and confirming that only one day's notice was given, I find that the tenant did not act in accordance with section 45 and therefore the landlord is entitled to retain the November 2018 rental payment.

The tenant has not been successful in this application.

Conclusion

The tenants' application is dismissed 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: September 23, 2019

Residential Tenancy Branch