



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FFT

Introduction

On May 27, 2019, the Tenants applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement.

The Tenant and the Landlord attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The documentary evidence was reviewed and was confirmed received. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Issues to be Decided

- Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

The parties testified that the tenancy began on June 1, 2005, and is on a month to month basis. The Tenants pay rent in the amount of \$1,063.00 each month.

The Tenants are seeking compensation for a loss of personal property. The Tenant testified that on June 27, 2018, he discovered water leaking into the rental unit from the unit above. He testified that water was coming from the ceiling into his bathroom, corridor, and bedroom. The Tenant testified that the water from above was coming from the toilet and the water destroyed his king size mattress. He testified that the mattress was wet and smelly.

The Tenant testified that he reported the water leak and mattress damage to the Landlord. The Tenant testified that the Landlord apologized and said that she would do something for the Tenants. The Tenant testified that they asked the Landlord to purchase them a new king size mattress.

The Tenant testified that the Landlord failed to properly repair the toilet in the unit above them and therefore they are responsible for the water leak.

The Tenant testified that the Landlord offered them the amount of \$500.00 but they refused the offer.

The Tenant testified that the mattress was only 8 or 9 months old. The Tenants did not provide a quote for the replacement cost of a king size mattress. The Tenants are seeking compensation in the amount of \$1,200.00.

In reply, the Landlord, testified that the occupants who were living above the Tenants plugged the toilet with food. The occupants tried to flush the toilet, but the toilet plugged, and the toilet water overflowed onto the floor and travelled down into the unit below.

The Landlord testified that the incident is not due to negligence on the part of the Landlord and is the responsibility of the occupants living above the Tenants.

The Tenant was asked if he had Tenant's insurance for the personal contents of his rental unit and he replied "no".

The Tenant asked why the Landlord offered \$500.00 if they are not responsible. In reply, the Landlord testified that the owner of the building wanted to help the Tenants.

The Landlord testified that it has been 14 months and he is not sure whether or not the owner will still offer to assist the Tenants.

Analysis

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

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.*

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I make the following findings:

The Tenant suggested that the Landlord failed to properly repair the toilet located in the unit above; however, the Landlord refuted this claim. I find that there is insufficient evidence from the Tenant to prove that the water damage caused by the over flowing toilet was caused by a failure of the Landlord to comply with the Act, or Regulation or that the damage was the result of the Landlord's failure to make a repair.

I find that the Landlord is responsible to repair any water damage caused to the Tenant's unit; however, the Landlord is not the personal insurer of the Tenant's personal property / possessions. I find that the Landlord did not cause or contribute to the flooding and is not responsible to replace the Tenants' mattress.

The Tenants' application for compensation from the Landlord due to a water damaged mattress is dismissed without leave to reapply.

Conclusion

The Tenants' application for compensation is not successful. There is insufficient evidence from the Tenants to prove that the water damage caused by the over flowing

toilet was due to a failure of the Landlord to comply with the Act, or Regulation or that the damage was the result of the Landlord's failure to make a repair.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were not successful, I decline to award the recovery of the filing fee.

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 17, 2019

Residential Tenancy Branch