



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDCT FF

Introduction

This hearing was convened in response to an application by the tenant for a Monetary Order under the *Residential Tenancy Act* (the Act) in compensation for loss and is inclusive of recovery of the filing fee associated with this application.

Both parties appeared in the conference call hearing. The landlord acknowledged service of the application and Notice of Hearing by registered mail. Each party acknowledged receiving the evidence of the other as provided to this proceeding. The parties were provided opportunity to mutually resolve or settle their dispute, to no avail. Each party was given opportunity to be heard, to present evidence and to make submissions. The hearing proceeded on the merits of the tenant's application and evidence. At the end of the hearing the parties testified having provided all the *relevant* evidence they wished to present. I have reviewed all evidence before me however only the evidence *relevant to the issues* in this matter is described in this Decision.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed for loss and/or recovery of the filing fee?

Background and Evidence

The following is undisputed. I have benefit of the written tenancy agreement stating the tenancy began in 2017. Rent in the amount of \$1350.00 was payable in advance on the first day of each month. The landlord noted that the tenancy agreement required the tenant to obtain tenant's insurance to cover any accidental losses of the tenant; and, it was undisputed by the tenant that the tenant did not obtain such insurance.

The parties each testified they orally mutually agreed to end the tenancy August 10, 2019 following an accidental / unforeseen water ingress incident into the rental unit and the ensuing required repairs due to the resulting water damage.

It is undisputed by the parties that on June 25, 2019 an apparent unforeseen pipe burst resulted in an abundance of water into the rental unit, damaging the ceilings, walls, cabinetry and floors. Following several days of insurance restoration work the tenants still experienced the effects of the water damage in a foul smell and residual moisture retention in flooring and the walls. During the restoration work the tenant was informed by the restoration contractor of the need for “major repairs” to address the water damage. Two weeks following the water ingress incident (July 09 – 11, 2019) the tenant arrived home to find that the sink and cabinetry removed and the landlord stating the rental unit required repairs. The parties agreed the rental unit was not fit for occupation. Despite short notice, the tenant chose short term urgent accommodations nearby in the form of an AirBnb rental starting July 11, 2019. Near the end of July, the tenant was informed the repair work would require an additional month, however, after 4 weeks (11 days into August 2019) the tenant and landlord mutually agreed to the tenancy’s end. The tenant then moved to alternate accommodations, initially to the end of that month.

The tenant provided evidence they paid \$3810.00 for emergency accommodations from July 11 to August 10, 2019 and testified they paid \$1100.00 for the balance of August 2019. The parties agreed the tenant was reimbursed pro-rated \$900.00 for the month of July 2019 (July 11 – 31, 2019) and *was agreed* that \$1350.00 rent for August 2019 was not payable by the tenant.

Analysis

The full text of the Act, Regulation, and other resources can be accessed via the RTB website: www.gov.bc.ca/landlordtenant .

It must be known that the tenant, as applicant, bears the burden of proving their monetary claims pursuant to the Act, on balance of probabilities. On preponderance of the relevant evidence before me on balance of probabilities I find as follows.

It must be noted that the tenant’s obligation of rent at \$1350.00 every month would have required the tenant to pay \$2700.00 in rent for July and August 2019. The evidence is that they ultimately solely paid \$1550.00 in rent for the two months (\$450.00 prorated rent of July 2019 and \$1100.00 of rent paid for August 2019). Albeit, the tenant paid \$3810.00 for urgent accommodations within that same period. As a result, I find the

evidence is that the tenant's loss for July and August 2019 is not \$3810.00, but rather \$2660.00, representing the amount paid by the tenant in excess of their usual rent obligation for the months of July and August 2019.

Calculation,

[(\$2700.00 rent owed - \$1550.00 rent paid) - \$3810.00 paid] = \$2660.00 loss to tenant

None the less, **Section 7** of the Act provides the following in respect to the tenant's claim of loss.

7. 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.
- 7(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.

Effectively, in this matter, the tenant must satisfy each / all components of the test below established by Section 7:

1. *Proof the loss exists.*
2. *Proof the damage or loss occurred solely because of the actions or neglect of the landlord in violation of the Act or an agreement.*
3. *Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.*
4. *Proof that the claimant (tenant) followed section 7(2) of the Act by taking reasonable steps to minimize the loss or damage.*

Therefore, the tenant bears the burden of establishing their claim by proving the existence of a loss stemming directly from a breach of the agreement or contravention of the *Act* by the tenant. Once established, the tenant must then provide evidence that can reasonably verify the monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation and to mitigate the loss claimed.

In the absence of evidence to the contrary, I accept the evidence that the water ingress and resulting water damage was accidental and not resulting from the actions or conduct of the landlord in violation of the Act. In this matter I find the tenant has not supported # 3. of the above test, namely that the landlord is responsible for the tenant's loss, therefore the tenant's claim fails and is **dismissed**, without leave to reapply.

Conclusion

The tenant's application is dismissed, without leave to reapply.

This Decision is final and binding.

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: December 17, 2019

Residential Tenancy Branch