



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction
Standards

A matter regarding Devon Properties and
[tenant name suppressed to protect privacy]

Dispute Codes

MNDC FF

DECISION

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on February 18, 2020. The Tenant applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- recovery of the filing fee.

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Landlord stated she got the Tenant's Notice of Hearing package and evidence. The Tenant confirmed receipt of the Landlord's evidence package.

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

- Is the Tenant entitled to compensation for money owed or damage or loss under the *Act*?

Background and Evidence

Both parties agreed that rent was set at \$1,395.00 during the material time (when the renovations occurred). The Tenant filed this application for monetary compensation for two items, as follows:

1) \$678.60 – Accommodation costs – August 31- September 3, 2019

The Tenant explained that the Landlord asked her to move out of the rental unit for around 12 days at the end of August 2019, while the main plumbing stack was replaced in the building. The Tenant stated that the Landlord required full access to the unit, and she was put up in a hotel from August 18, 2019, until August 31, 2019. The Tenant stated that the Landlord paid for the hotel for these dates. The Tenant stated that when she moved into the hotel, she took with her some valuables, and some clothes, but she left most of her possessions in the rental unit while the work was being done.

The Tenant stated that she returned on August 31, 2019, and noticed that there was a very strong smell of spoiled and rotten food coming from her fridge. The Tenant stated that she was also displeased with the dirty floors. The Tenant stated that she contacted the emergency building manager, to complain of these issues that same day. The Tenant stated that she left the unit on August 31, 2019, and went to stay at a hotel of her choosing for 3 nights (invoice provided), totalling \$678.60. The Tenant is seeking to have this amount reimbursed because the smell of rotten food made her unit unliveable.

The Landlord stated that they were upgrading the plumbing in the building and went out of their way to ensure the Tenants affected (several other units as well) were treated fairly and generously. The Landlord stated that they put the Tenant up at a 5-star hotel with breakfast service and free parking. The Landlord paid for the hotel accommodation from August 18, 2019, until August 31, 2019 (which also included an additional night to accommodate the Tenant's work schedule). The Landlord also explained that in addition to free accommodation at the 5-star hotel, the Tenant did not have to pay rent while the renovations were being done.

The Landlord stated that when the kitchen was being put back together on August 29, 2019, they noticed that the fridge was not working properly, and all the food had spoiled. The Landlord provided invoices to show that they immediately had the fridge cleared out, and sanitized (professionally) that same day, and the following day

(August 30, 2019) had the fridge repaired, along with a temporary odour blocker. The Landlord stated that there was one part that was not available until it could be couriered (odour absorbing strip) 48 hours later. The Landlord stated that the Tenant was not pleased with the smell of the fridge when she returned on August 31, 2019, but the Landlord stated the rental unit was still inhabitable. The Landlord does not feel it is reasonable to expect them to pay for a hotel for 3 extra nights because of the smell, which was mostly gone by the time the Tenant returned. The Landlord stated that they gave the Tenant a \$150.00 food credit because of the fridge issue, and the fact that she lost some food items. The Landlord stated they took swift action and did all they could to help the Tenant. The Landlord stated that after the Tenant complained about the floors on August 31, 2019, they immediately recleaned them, in case something was missed.

The Tenant stated she did not return to the unit until September 3, 2019, because she had to work night shifts on August 31, September 1, September 2 (1:30 pm until midnight). The Tenant stated she could not return because it needed the full time to properly air out and because she was working too much over that weekend.

2) \$650.00 – Food costs

The Tenant stated that she is seeking this amount to pay for meals she had to eat out while she was living in the 5-star hotel (August 18-31, 2019). The Tenant stated that the hotel room did not have a kitchen, so she had to eat out more, which became expensive. The Tenant did not explain how she calculated this amount, nor did she provide any breakdown or receipts.

The Landlord stated that they should not be responsible for this item. The Landlord feels the Tenant was already fairly compensated (no rent over the material time, free stay at a nice hotel, free breakfast, free parking).

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

First, I turn to the Tenant's first item - \$678.60 for Accommodation costs – August 31-September 3, 2019 (3 nights). It is undisputed that the Tenant's fridge malfunctioned during the period of time the Tenant had to vacate her rental unit for the pre-planned renovations. It is not clear exactly when the fridge failed, but the Landlord stated they found out on August 29, 2019, when they were re-assembling the kitchen prior to the Tenant's return on August 31, 2019. The Landlord stated that they immediately had the fridge professionally cleaned, and sanitized in order to mitigate the issue. I also note the Landlord had the fridge repaired and turned back on by August 30, 2019, although the proper odour filter would be 48 hours extra. I note that the invoice shows the Landlord had a carbon odour blocker put in the fridge to help with the odour while they awaited the proper odour filter which was on order.

I accept there would likely have still been some odour left when the Tenant returned to the unit on August 31, 2019. However, I find there is insufficient evidence that the unit was uninhabitable as a result of this issue, or because of the dirt on the floor, such that she would have had to stay at an alternative location and have those costs reimbursed. I note the Landlord acted swiftly, and as soon as the issues were discovered, and I further note the fridge was professionally sanitized/cleaned prior to the Tenant's return. Although the lack of part availability for the odour filter likely contributed to some lingering food aromas when the Tenant returned on August 31, 2019, I find the Landlord mitigated as best as they could and even installed a temporary odour block while they awaited the new odour filter.

I note the Tenant returned on August 31, 2019, and was not pleased with the smell and the dirty floors, so she rented herself a hotel room for 3 days because it needed this much time to further “air out”. However, I note the Tenant also stated she did not return to the unit until September 3, 2019, 3 days after leaving to air out the unit, and it is unclear how she would have known it needed this much time to air out if she never returned between August 31, and September 3 to check in. Ultimately, I do not find the Tenant has sufficiently demonstrated that the rental unit was uninhabitable, such that she would be entitled have the Landlord pay for an additional 3 nights worth of hotel costs.

Next, I turn to the Tenant’s second item - \$650.00 for food costs over the period from August 18 - 31, 2019. However, I note the Tenant provided no breakdown as to how she arrived at this amount, nor did she provide any documentary evidence showing what her actual expenses may have been for not having her own kitchen. I note the Tenant listed her food costs as \$650.00. However, her costs were not itemized or broken down such that the respondent, or myself, would be able to understand the full particulars of the claim, and how it was calculated. I find the lack of itemization as to how the monetary amounts were calculated is prejudicial to the other party, and their ability to understand and respond to the items properly. I turn to the following rules of procedure:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- ***a detailed calculation of any monetary claim being made;***
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

I find the Tenant has not met the burden of proof to demonstrate the value of her loss. I dismiss the Tenant’s application for this reason.

As the Tenant was not successful with her application, I decline to award the cost of the filing fee.

Conclusion

The Tenant's application is dismissed, in full, without leave.

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: February 18, 2020

Residential Tenancy Branch