



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

As the parties were in attendance I confirmed that there were no issues with service of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

Issues

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or

arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on August 1, 2015, with monthly rent currently set at \$2,043.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$925.00, which they still hold.

It was undisputed by both parties that a pipe had burst in the building, causing water damage to the rental unit on May 29, 2019. The tenants moved out for two weeks in order for the repairs to be completed by the strata, and were reimbursed half the monthly rent by the landlord.

The tenants are seeking reimbursement for their losses as set out below:

Item	Amount
Short term rental	\$2,500.00
Restaurant meals (\$60.00 x 15 days)	900.00
Time off for repairs	224.80
Moving Costs (mileage)	34.25
Time off work	356.55
Loss of time for moving in	112.40
Mileage (moving In)	20.55
Cleaning Costs	200.00
Utilities used during repairs	28.83
Furniture Damage – bookshelf	100.00
Furniture Damage – ottoman	30.00
Damage- garbage bin	10.00
Filing Fee	100.00
Total Monetary Order Requested	\$4,617.38

The tenants testified that in addition to the damage to their personal belongings ,and the costs of moving, they also had to spend time cleaning and moving. The tenants are also seeking reimbursement for the electricity used during the repairs.

The landlord disputes the tenants' entire monetary claim as they feel that they reimbursed the tenants the monthly rent for the period that they were unable to reside in the rental unit. The landlord responded that they have fulfilled their obligations under the *Act* and tenancy agreement.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenants must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenants bear the burden of establishing their claim on the balance of probabilities. The tenants must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenants must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenants must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows. As stated above, the tenant applicants have the burden of proof in supporting their claim for monetary compensation. Although I sympathize with the tenants that they have suffered significant losses during this tenancy due to the water leak and associated repairs, I find

that the landlord has met their obligations under the *Act*, tenancy agreement, and as required by law.

I find that the losses claimed in this application are directly and solely due to a burst pipe in the building, which was unforeseen by both parties. I find that the landlord had acknowledged that due to the repairs the tenants would not be able to occupy the rental unit, and reimbursed the tenants for the period that they had vacated the rental unit. I am not satisfied that these losses were due to the negligent or deliberate act of the landlord.

I find that the tenants failed to provide sufficient evidence to support that the losses claimed were directly and solely due to the landlord's failure to comply with the *Act* or tenancy agreement, and accordingly I dismiss the tenants' entire monetary claim for losses without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenants' application for recovery of the filing fee without leave to reapply.

Conclusion

I dismiss the tenants' entire application 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 1, 2020

Residential Tenancy Branch