



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act, Regulation* or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, 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 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(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave the following testimony. The tenancy began on February 1, 2017 and ended on June 2, 2019. The monthly rent of \$2900.00 was due on the first of each month. The tenant testified that on May 12, 2019 a washing machine in the home overflowed on the top floor causing significant water damage to the home requiring the tenants to move out. The tenants testified that the landlord paid them \$2600.00 for loss of use and to cover their personal insurance deductible and cost of electricity for

humidifiers. The tenant testified that she believes that she should have been given a 4 Month Notice to End the Tenancy for Renovations as the home required extensive repairs. The tenant testified that she is seeking the one month's compensation that would come with such a notice, the loss of wages for three days for her husband to attend to meet with the insurance company and facilitate the move and the recovery of the filing fee.

The tenant is applying for the following:

1.	One month Rent as compensation	\$2900.00
2.	Loss of wages	870.00
3.	Filing fee	100.00
4.		
5.		
6.		
	Total	\$3870.00

The landlord gave the following testimony. The landlord testified that he was not prepared to end the tenancy by way of notice as there was no default of payment or breach of a term of the tenancy and that the tenancy was frustrated. The landlord testified that the tenants were a pleasure to have during the tenancy up until the washing machine overflowed on May 12, 2019. The landlord testified that the insurance company advised that the tenants should vacate the unit due to possible health risks.

The landlord testified that he and the tenants came to an agreement to end the tenancy on June 2, 2019 and that he would pay them \$2600.00 along with the return of their deposit, which he did. The landlord testified that when the tenants moved out, he thought the matter was dealt with and was shocked when he was served notice of this hearing in May during the pandemic; almost a year later. The landlord testified that he feels that he has properly compensated the tenants as part of their agreement and that no further compensation is necessary.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

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.

The tenant failed to provide sufficient evidence on a balance of probabilities to satisfy **all four factors listed above as required.** In addition, and most significantly, the parties signed a Mutual Agreement to End the Tenancy and agreed to monetary terms which both parties agreed that the landlord has paid to the tenant. The tenant testified that she signed that document under duress but failed to provide sufficient evidence to support that submission. I find that the tenant and the landlord settled the matter and that no further compensation is required.

The tenants have not been successful in their application.

Conclusion

The tenant's 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 04, 2020

Residential Tenancy Branch