



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a monetary order for loss or other money owed.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. The parties confirmed under affirmation that they were not recording this hearing.

Preliminary issues

At the outset of the hearing the tenants confirmed they did not serve the landlord with their amended application increasing their claim. Therefore, I will not consider the amended application.

At the outset of the hearing the landlord indicated they did not receive any digital evidence from the tenants. The landlord stated they only received the tenant's application package and a copy of an email from the plumber.

The tenant stated that they sent a thumb drive to the landlord; however, they did not comply with the Rules of Procedures 3.10.5 as they did not confirm with the other party that they were able to review the evidence.

As I am not satisfied that the landlord was served with the tenants' digital evidence and the tenants' failure to comply with the Rules of Procedures to confirm with the other party that they received and were able to review the evidence, I find I must exclude all other evidence filed by the tenants from this hearing. I will only allow the email of the plumber that was acknowledged received by the landlord with the original application.

The tenants confirmed they received the landlord's evidence.

Issue to be Decided

Are the tenants entitled to a monetary order for loss or other money owed?

Background and Evidence

The tenancy began on April 28, 2020. Rent in the amount of \$2,400.00 was payable on the first of each month. A security deposit of \$1,200.00 was paid by the tenant. The tenancy ended by an order of the director as the tenants had failed to pay rent in the amount of \$7,200.00. I have noted the files number on the covering page of this decision.

The tenants claim the following in their application,

“Loss usage of main floor of townhouse for 4 months 6240. 2 days loss of wages totalling 23 hours. 468.20 Day 1 and 561.00 Day 2”.

[Reproduced as written.]

The tenant testified that they were unable to use any portion of the main floor of the rental unit which contained the kitchen, dining room and living area due to a water leak they discovered in the ceiling. The tenant stated that that notify the landlord of the leak on September 20, 2020, which the landlord sent a plumber in the next day who had to cut some holes in the ceiling to try and find the leak. The tenant stated that a second plumber came and made the repair on September 26, 2020.

The tenant testified that they did not use the main floor of the house because they were told by the 2nd plumber that the ceiling holes had to close immediately to ensure they were not impacted by any black toxic mould. The tenant stated this was not done by the landlord and this made the entire main floor unusable.

The tenant testified that they cook their food on a BBQ and washed the dishes in the bathroom sink and ate their food in their bedroom or in the garage. The tenant seek to recover \$6,240.00 for four months of loss of use of the main floor.

The tenant testified that they lost 2 days of work because they had booked off September 8, 2020, to help his girlfriend with their son as their son does not do well when stranger in the home and that was the date they had arranged with the plumber.

The tenant stated that the plumber did not attend because it had not received approval from the landlord. The tenant stated that they then had to rebook off work again.

The tenant testifies that they work between 8 to 14 hours a day. The tenant stated that they don't know how many hours they would have received for those two days because each day depends on the amount of work assigned. The tenant stated that they average it out and seek compensation for two days of loss work in the amount of \$1,029.20.

The landlord testified that there was no water leaking from the ceiling; however, it had moisture spots in the ceiling. The landlord stated that they immediately responded and had a plumber attend as soon as they were available. The landlord stated that the first plumber cut the ceiling in two places in the cleaning because they could not locate the water source.

The landlord testified that they ended up hiring a second plumber who attended on September 24th and the repaired was made on September 26, 2020, which was a small leak from the washing machine on the upper floor. The landlord stated that they texted the tenant if they could see any more moisture, which on October 13, 2020, the tenant text them back that there was no more problems.

The landlord testified that they had to leave the ceiling area open to ensure the wood was dry before closing it in with drywall. The landlord stated that they were looking for someone who could do both the dry wall repair and paint which were completed by December 25, 2020.

The landlord testified that it is simply not true that the main floor of the house was unusable as the holes were made between the dining room and living room near the stairs. The landlord stated that they were in the rental unit and the tenants had not move any of their belongings. The landlord stated they were no holes in the kitchen area. Filed in evidence is a floor plan of the main floor showing where the dry wall was removed from the ceiling.

The landlord testified they are not responsible for the tenant's wages as there was no need for them to be there. The landlord only suggested to the tenant that if they want to book with the plumber a time that is convenient to them so they could be present, such a weeknight or weekend. The landlord stated they attend with the plumber.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenants have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, I find the landlord complied with the Act, when they took reasonable steps to have the leak repaired, took reasonable steps to ensure the wood in the ceiling was dry before enclosing with drywall to ensure no mould was created and patched and painted when it was safe and reasonable to do so. I find the tenants have failed to prove the landlord violated the Act.

I do not find the tenant is entitled to any loss wages, as it is a personal choice to take time off work as there is no need for the tenant to be present while repairs are made.

Although a tenant may be entitled to compensation, even if the landlord has not breached the Act, if they can prove they lost the use of space; however, I do not find the testimony of the tenant to be credible for the following reasons.

I find it unreasonable and not logical that the tenants would be washing their dishes in the bathroom sink and not cooking in the kitchen for four months when the ceiling in the kitchen was not impacted in anyway.

Further, the holes that were made in the ceiling did not impact the use of the dining room or living room, while cosmetically may have been displeasing this was necessary to ensure the wood in the ceiling would dry sufficiently.

Furthermore, I do not accept that a plumber would tell the tenant that there is black toxic mould and that this should be sealed immediately, it is common knowledge, that when a water leak occurs that the water must be dried fully before sealing the affected area, as to do otherwise could create mould.

Furthermore, there is no evidence that would lead me to believe the main floor of the house was unusable due to a minor leak that was repair in a reasonable timeframe. This again is not supported by the plumber's email. The plumber in their email only said they saw minor staining of the wood and drywall and suggested that it should be tested for mould. Not that there was any mould which could only be determined by a qualified expert.

In addition, if the main floor was truly unusable for four months due to toxic mould spores that may be in the air, it would have been reasonable for the tenants to notify the landlord of this concern, so the landlord could have an air quality test done of the premises. This issue was never raised.

I find it more likely than not that the tenants only made their monetary claim of \$7,287.20 and then amended their claim to \$7,422.80 in retaliation. The landlords was awarded \$7,400.00 in a previous decision, which I have noted on the file number on the cover page of this decision.

In light of the above, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenants' application is dismissed 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: March 09, 2022

Residential Tenancy Branch