



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, RR, O, FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit, money owed or compensation due to damage or loss, to allow a tenant to reduce rent for repairs, other and recovery of the filing fee.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Background and Evidence

This tenancy began August 1, 2011, with monthly rent of \$575.00 and the tenant paid a security deposit of \$287.50.

The landlord testified that in July 2011 the tenant contacted him regarding the rental property which was vacant and inquired about renting it. The landlord and tenant negotiated a rent reduction from \$650.00 to \$575.00 and agreed that the tenant would take responsibility for cleaning the property no later than August 15, 2011 as the prior tenant had left the property in poor condition; the landlord and tenant signed an agreement to this effect. The tenant took possession of the property August 1, 2011 and as the tenant was taking responsibility for cleaning up the property the landlord did not charge the tenant rent for the month of August 2011.

The tenant testified that she had agreed to clean up the property but that because it was in such bad condition the clean up took the entire month of August and she believed that she should have not had to pay rent for September 2011 either. The tenant stated that the clean-up and repairs also cost more than expected and she is now seeking reimbursement from the landlord for those expenses. The tenant acknowledged that there is no agreement in writing with the landlord for reimbursement of any costs associated with cleaning up the rental property.

The landlord offered to provide the tenant with an additional \$575.00 which equals one month of rent if the tenant withdrew their application and did not seek further compensation from the landlord; the tenant refused this offer.

The tenant stated that there was no primary heat source in the rental unit and she had to borrow space heaters from her friends to heat the rental unit throughout the winter. The landlord stated that the tenant was told prior to moving in that the rental unit was heated by oil and that it would be the tenant's responsibility to pay for the oil for the furnace. The tenant responded by stating that when she called the oil company they told her a serial number and pressure test results were required for the oil tank and until they had that information they would not refill the oil tank. The landlord stated that oil tanks are not pressurized and he when he called the oil company they told him they did not need a serial number and pressure test results for the oil tank.

The tenant stated that on the morning of September 7, 2011 she was walking outside on the porch towards the stairs, suddenly slipped off the porch, flew through the air and landed on the ground. The tenant stated that when she slipped she landed on a rock and as a result has a torn muscle in her left arm and may also have a damaged bicep. Because of this injury the tenant was not able to return to work in September 2011, has remained off work and has had to not only borrow money from friends and family but apply for welfare to pay her rent and bills. The tenant stated that she did not recall if the porch was wet however at the time she was wearing footwear similar to 'cros' and chatting with her neighbour who was outside in her back yard next door.

The landlord stated that on September 7, 2011 he went to the rental unit to have the tenant sign the tenancy agreement the tenant advised him she had slipped and fallen on the outside stairs which has a hand railing. The landlord stated that the tenant told him that her shoes were wet when she slipped; the tenant denied this statement. The landlord advised the tenant that he would return to paint and apply sand to the stairs but when he returned the tenant had already nailed roofing shingles on the steps to act as a non-slip surface. The landlord did acknowledge that the tenant had told him she had injured her arm in the fall.

The tenant's witness recalled the tenant and landlord having a conversation about putting a non-slip surface on the stairs but could not recall when this conversation took place. The witness stated that the morning the tenant slipped and injured herself she was home and ran outside to help after hearing her neighbour yelling for help for the tenant.

The tenant stated that she is seeking compensation for economic loss, damage to her reputation, emotional distress, pain and suffering and mental anguish. The tenant stated that she is embarrassed that she has had to apply for welfare and ask friends and family for financial assistance. The tenant believes if she is successful in this application she will have to use much of this money to pay back any welfare money she has received.

The tenant stated that the injury to her arm which is a result of slipping on the porch, has caused significant disruption of her personal life as she can no longer work or take part in recreational activities. The tenant stated that she is in constant pain and cannot sleep because of the pain and stress.

The landlord stated that he feels very sorry for what the tenant is going through because of her slip and fall however he did not believe he was any way remiss in his duties as a landlord and responsible for what happened. The landlord stated that he takes care of his property and tenants, always fixes things in a timely manner and strives to keep his tenants happy as he likes to have long term tenants in his rental units. The landlord wondered why it took 7 months for the tenant to make her claim against the landlord and questioned the tenant's motives. The landlord also pointed out that footwear like 'crocs', which he also wears, are plastic and tend to be very slippery if a surface is at all wet.

The tenant stated that the evidence '*speaks for its self*' and if the landlord had not been negligent in his duties in getting the non-slip surface on the stairs that she would not have suffered the slip and fall and the resulting injury. The tenant stated that during her tenancy she felt she had not been '*justly treated*' by the landlord and filed her application when she became '*fed up*' and '*had had enough*'. The tenant then corrected her statement and commented that her application was not retaliatory against the landlord.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to return of the \$287.50 security deposit as the tenancy has not ended. The tenant requested the security deposit back because no move in condition inspection was completed when she first took possession of the rental unit. The landlord however has the right to retain the security deposit until the end of the tenancy and shall continue to hold the security deposit. Therefore this portion of the tenant's application is dismissed without leave to reapply.

In regards to the tenant's claims for \$450.00 and \$124.32 for painting and out of pocket expenses, I find that the tenant has not met the burden of proving that they have grounds for entitlement to this amount. The tenant signed an agreement with the landlord where by the tenant would clean up the property, paint and look after the yard. This agreement does not state that the landlord will reimburse the tenant for any work completed or supplies bought by the tenant; however the landlord did not charge the tenant rent for August 2011 because of the work required. Therefore this portion of the tenant's application is dismissed without leave to reapply.

In regards to the tenant's claim for \$575.00 for work done on the property, the tenant was in fact already given 1 free month's rent of \$575.00 by the landlord for August 2011

in exchange for work done on the property. Therefore this portion of the tenant's application is dismissed without leave to reapply.

In regards to the tenant's claim for \$700.00 for no primary heat source, I accept the landlord testimony that the rental unit is heated by an oil furnace, it is the tenant's responsibility to pay for oil and have the oil tank filled or use alternate heating of their choosing. And while there seems to be a significant amount of confusion as to why or whether or not the oil company told the tenant they required a serial number and pressure test, I do not now see how the tenant is entitled to \$700.00 compensation as there is no evidence that anything is wrong with the oil tank or furnace. The landlord also testified that the furnace is in good working order and neither a serial number and pressure test is required to fill the tank with oil. Therefore this portion of the tenant's application is dismissed without leave to reapply.

A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that this claim rises to that requirement.

It is acknowledged that the tenant slipped and fell however I find it improbable to determine if the slip was due to the condition of the surface of the porch or the tenant not paying due care and attention early in the morning when the porch and stairs were possibly wet with dew, the tenant's footwear and or the tenant walking towards the end of the porch and talking to her neighbor in the next yard. Therefore I am not satisfied that the tenant's slip and fall was a direct result of the landlord's negligence whether intentional or unintentional.

In regards to the tenant's reputation, emotional distress and mental anguish, I find that the tenant has not established how the actions of the landlord have affected her in this way. The tenant states that as she could not work, has had to apply for welfare and borrow money to pay her bills this has been humiliating for her and damaged her reputation. The tenant claims a loss of income which is acknowledged due to the tenant's injury from the slip and fall. The tenant also refers to having to pay welfare back depending upon the outcome of this application. The tenant however has not clearly established how she has been humiliated, how her reputation has been damaged or what mental anguish she has been suffering.

Therefore, based on the conflicting testimony and numerous unknowns of how or why the tenant's slip and fall occurred and no establishment of how the landlord damaged the tenant's reputation or caused the tenant emotional distress, is it not reasonable to uphold the tenant's tort claims against the landlord.

The 7 month delay in filing this claim must be also be taken into consideration as well as the tenant's final testimony where she stated that she had not been '*justly treated*' by the landlord and filed her application when she became '*fed up*' and '*had had enough*'.

The tenant's application therefore is dismissed in its entirety without leave to reapply.

Conclusion

The tenant's application is hereby 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: April 24, 2012

Residential Tenancy Branch