



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MDNC MNR

Introduction

This hearing was convened in response to an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and for the cost of emergency repairs.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The parties acknowledged receiving the evidence of the other. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

1. Is the Tenant entitled to the monetary amount claimed?

The onus is on the applicant to prove their claims.

Background and Evidence

The tenancy was Ordered at an end by a Decision and Order of Possession dated February 14, 2013. The payable rent during the tenancy was \$850.00. The parties agreed the tenant occupied the rental unit since October 01, 2012. The tenant no longer occupies the rental unit and the parties acknowledged there is still a quantum of unpaid rent owed the landlord exceeding the monthly payable amount for rent during the tenancy.

The tenant claims that during the month of December 2012 the kitchen and laundry room pipes “burst” causing a “bad flood” and as a result some water damage to the tenant’s belongings (the water issue). The tenant claims that the burst pipes were the result of compromised or improper construction and that the tenant was told by an electrical safety officer and a plumber to leave the rental unit as it was not safe. The

parties agreed that at one juncture the landlord confirmed with the tenant's relative (grandmother) the tenant should not return to the rental unit for several days until the issues with the rental unit were resolved. The landlord acknowledged receiving a list of deficiencies with the unit from the aforementioned safety officer, which they claim they resolved to satisfaction and safe standards.

The landlord's agent testified that when they were initially informed of the water issue they attended the unit and discovered the kitchen drain plumbing had come detached from the sink, and determined this was the source of the water issue. The landlord testified they resolved the problem by putting the drain plumbing back into place. In a subsequent visit the landlord had a plumber repair the drain plumbing. The landlord claims that they were not made aware of any additional problems related to the plumbing and that the rental unit did not present as having been affected by the drain plumbing problem.

As a result of the "burst" pipes the tenant is claiming water damage to furniture and other belongings as well as a cost they incurred to clean the unit of compromised water. The tenant also claims the costs of alternate accommodations of a hotel and of food / meals, all while displaced from the rental unit, purportedly with the landlord's approval and knowledge. In this latter claim the tenant is effectively claiming loss of use of the rental unit during remediation by the landlord to offset the alternate accommodation costs.

The tenant also made an abundance of claims purporting to the landlord's improper handling of the Order of Possession and of their belongings at the end of the tenancy – for which the tenant claims they are still assessing the value of their purported loss. This claim is not before me and the parties were advised it is available to the tenant to seek if they have cause for a separate claim.

Analysis

I have carefully considered the relevant testimony and all the relevant documentary evidence in this matter and on preponderance of the available evidence I have reached the following Decision.

When a tenant makes application for dispute resolution the onus lies on the tenant to prove their case or claims. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without sufficient supporting evidence, the party with the burden of proof has not met the onus to prove their claim and the claim generally fails. In this matter the tenant claims damage to

furniture and belongings as a result of water ingress into the rental unit. I find the tenant has not provided sufficient evidence to prove their monetary claim for damage to furniture and belongings, therefore this portion of their claim must fail. **I dismiss** this portion of their claim, without leave to reapply.

In this case, the tenant has the burden to prove they suffered a loss of use of the rental unit. The tenant's evidence consisted primarily of verbal testimony which was mostly disputed by the landlord. In addition, the tenant failed to provide supporting evidence for their claims for, cleaning, hotel accommodations or food; although they testified they had such proof. Based on the aforementioned I find the disputed verbal testimony insufficient to meet the tenant's burden of proof to establish full entitlement to their monetary claim for loss of use. However, on balance of probabilities, I accept the undisputed testimony of the tenant and the landlord that the rental unit was sufficiently compromised that the landlord had to attend to plumbing issues, and other deficiencies as provided to them by the safety officer, and that the landlord was aware of the need for a period of absence by the tenant. Accordingly I find the tenant is entitled to a quantum of compensation for loss of use of the rental unit to which I limit to the equivalent to one month's rent in the amount of \$850.00. As the parties agreed the landlord is owed unpaid rent I find the compensation amount effectively offsets an equal amount of unpaid rent for which the landlord is now compensated and the tenant's award is equally satisfied. Therefore, I decline to grant the tenant a monetary order.

Conclusion

The tenant's application, in part, **has been granted**, and effectively the tenant's award has been offset by an amount owed to the landlord. The balance of the tenant's claim has been **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 19, 2013

Residential Tenancy Branch