



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, ERP, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make repairs and emergency repairs to the rental unit and a monetary order for money owed or compensation for damage or loss.

The above listed parties attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other's evidence and make submissions to me.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs and emergency repairs?

Is the tenant entitled to monetary compensation?

Background and Evidence

Although no written tenancy agreement was entered into evidence, the tenant submitted that the tenancy began in mid September 2013, that she vacated the rental unit on January 21, 2014, monthly rent was \$1000 and she paid a security deposit of \$500 at the beginning of the tenancy. The parties agree that the tenant has not yet removed all her personal property.

The tenant's monetary claim is as follows:

- *Security deposit-\$500*
- *Snow shoveling-\$200*
- *Snow removal, roof-\$200*
- *Return of rent for October, November, December, and January-\$3900*

The tenant also claimed for miscellaneous, unspecified expenses for moving costs, food, gas and hotel accommodations.

In support of her application, the tenant submitted that she was forced to vacate the rental unit on January 21, 2014, due to her concerns over the rental unit. The tenant submitted prior to moving into the rental unit, she expressed to the landlord's agent, LH, that she could not afford baseboard heating, but was assured the propane fireplace would heat the home.

The tenant submitted that the only room she could afford to heat was one bedroom, due to the costs of propane and electric costs and other issues with the heating system.

The tenant further submitted that the landlord assured her that the owner would keep the driveway clear of snow; despite this, the landlord or owner failed to do so and that she was forced to clear the driveway.

The tenant submitted that shortly after moving into the rental unit, a leak developed, which was unattended by the landlord. In January 2014, according to the tenant, melting snow forced water into the home through a roof leak, creating a mould hazard. According to the tenant, the landlord told her to turn off the propane heat and then a leak in the tank developed.

Due to her health concerns over lack of heating and mould conditions, all ignored by the landlord, the tenant was forced to vacate the rental unit, according to the tenant.

As she was forced to vacate the rental unit, the tenant submits she is entitled to be reimbursed her rent, snow clearing costs, moving and food costs.

In response, the landlord submitted the rental unit was liveable as there was a family with children living in the rental unit prior to the tenant moving in. Additionally, the tenant submitted the owner has the fireplace inspected every year.

The landlord submitted that the tenant was compensated by the owner for a washer/dryer not being available at the start of the tenancy, that the tenant was informed that the primary heating source was baseboard heating, and that she informed the tenant the long driveway would be a challenge when the snow began falling.

According to the landlord, the tenant said she had a good car that could handle the snowy driveway.

The landlord submitted that when the tenant called in January concerning the roof leak, they had three roofing companies attend the rental unit for a quote and that the roof has not been rescheduled to be repaired when the snow clears.

The landlord denied that the drywall has been compromised, and therefore there are no mould problems.

Analysis

Based on the relevant oral and written 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 claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

As to the tenant's requests for repairs and emergency repairs, as the tenant vacated the rental unit, I dismiss this request as the tenancy is not continuing.

As to the tenant's request for monetary compensation, in the case before me, I find that the tenant submitted insufficient evidence to support her monetary claim. The tenant failed to supply any evidence that she ever notified the landlord of any requests for repairs or other concerns with the rental unit, which I find could be verified with written requests containing the dates.

As the landlord disputed that she had received such requests from the tenant, I could not rely on the conflicting testimony, which I find fails to prove the tenant's version of events in light of the landlord's differing, equally probable version of events.

Neither party had any supporting witness statements or other evidence to rely upon to support their respective positions.

I find that disputed oral testimony does not sufficiently meet the bearer's burden of proof.

I also find the tenant submitted no proof that the landlord promised snow clearing or economical propane heating. Under Residential Tenancy Branch Policy Guideline #1, a tenant in a single family dwelling is generally responsible for snow clearing.

Conclusion

Due to the above, I find the tenant submitted insufficient evidence meeting her burden of proof and I therefore dismiss her 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: March 10, 2014

Residential Tenancy Branch

