



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking a monetary order. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background, Evidence and Analysis

Both parties agree to the following. The tenancy began on July 31, 2012 and ended on July 26, 2013. The tenants were obligated to pay \$4350.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$2150.00 security deposit.

The tenant is the applicant in this matter. I will address the tenants claim and my findings as follows.

The tenant was originally seeking \$23150.00 but amended her claim during the hearing to \$18000.00. The tenant stated that she is seeking the return of approximately 35% of the rent she paid during the tenancy as compensation for having to deal with several deficiencies. The tenant stated the deficiencies were that she did not have a functioning hood fan vent during her tenancy, the fridge door didn't shut properly and at one point was without the use of the fridge for 10-12 days, the igniter on the gas cook top did not work throughout most of the tenancy, two of the three toilets in the unit were continually backing up and getting plugged as well as the kitchen sink and that during the last two months of her tenancy exterior work was being conducted right outside of her window with power tools, pressure washing, scraping and painting going on Monday to Friday 9-5 each day. The tenant stated that she advised the landlord of these issues but little was done and that when the landlord did eventually come to repair items they would accuse her of being the cause of the problem. The tenant stated that at move out she was just looking to move forward but because the landlord filed for a dispute resolution hearing in regards to the deposit she decided to file an application seeking compensation.

The landlords' agent stated that they adamantly disputed the tenants' claims. The landlords' agent stated that he does agree that these were items that needed repairing but they were done

within a reasonable timeframe and often would be addressed the following day. The landlords' agent stated that several servicemen reported that the problems with the sink and the toilets were from tenant misuse and negligence. The landlords' agent stated that in regards to the exterior work being done on the building it was the strata's decision to conduct that work on Limited Common Property which the landlord had no control over. In addition, the landlords' agent stated that the work was conducted near the tenants unit from July 8-26, not the two months as she had stated. The landlords' agent stated that the tenant would greatly exaggerate the length of time she was without certain facilities but that they were addressed by the landlord as soon as the tenant advised them. The landlords' agent stated the tenant had not complained at anytime to the Strata about the landlords conduct or file an application with the Branch until the landlord had filed an application to address the security deposit.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant must satisfy all four grounds as listed above. The tenant has failed to provide sufficient evidence to prove grounds 2-4. Based on the above, the documentation, the testimony, and on the balance of probabilities', I dismiss the tenants' application in its entirety.

Conclusion

The tenants' 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: March 31, 2014

