



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, MN, FF

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested more time to make an application to cancel a Notice, a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the filing fee.

Only the Tenant appeared at the hearing. She was assisted by L.C. and also had available to testify, C.M. as a witness. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

L.C. and C.M. testified the Tenant personally served the Landlord with the Notice of Hearing and their Application on May 22, 2015 at approximately 5:00-6:00 p.m.

At the outset of the hearing L.C. confirmed that the Tenant erroneously checked off the box on her application which indicated she was seeking more time to make an application to set aside a notice. L.C. and the Tenant confirmed they did not intend to make such a request. Further, they indicated that the tenancy ended "two weeks ago, before the end of June 2015". Neither could be more specific as to the date the tenancy ended. In the circumstances, I dismiss the Tenant's application for more time pursuant to section 66(1).

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord, and if so, in what amount?
2. Should the Tenant recover the filing fee?

Background and Evidence

L.C. testified that the tenancy began on October 1, 2014 in a different rental unit; following which, on February 18, 2015 the Tenant moved into the subject rental unit. Rent was \$525.00 per month. L.C. did not know if the Tenant had paid a security deposit.

L.C. further submitted that the Tenant sought the sum of \$500.00 for food which she says was spoiled when the power was out in the rental unit. L.C. further submitted that the Tenant had just been shopping and spent \$300.00 on groceries, such that those groceries were spoiled in addition to the items in her refrigerator and freezer.

L.C. further stated that the electricity bill had not been paid for two years and as a result the power was shut off in the rental unit. He further submitted that the electricity bill was in the name of the property owner, M.E. In total, L.C. alleged that the rental unit was without power for 23 days.

L.C. confirmed the Tenant did not have a receipt for the food she purchased prior to the power outage.

In the "Details of Dispute" section on the Tenant's Application for Dispute Resolution, the Tenant wrote that she had purchased \$225.00 worth of food and then went out of town.

When I asked L.C. why the Tenant had claimed she had bought \$225.00 worth of food in her application, yet he was claiming the amount was \$300.00, he responded that she spent \$225.00 - \$275.00.

L.C. then stated that the Tenant bought groceries and then immediately went out of town to visit a friend.

When I asked why she would buy perishable food only to leave the rental unit for 12 days, L.C. responded that she had purchased meat which was in the freezer, and condiments, which were in the fridge all of which spoiled when the power was out.

As L.C.'s testimony continued, he stated that the Tenant was seeking \$525.00-\$575.00 in compensation for lost food claiming she had purchased \$225.00-\$275.00 in groceries and had another \$300.00 in food already in the refrigerator and freezer. L.C. stated that he was with the Tenant when she made this grocery purchase and that the Tenant paid cash for her grocery purchase.

Finally, at the conclusion of L.C.'s testimony, he stated that the Tenant was seeking compensation for \$500.00 in lost food in addition to compensation for the 23 days he says the Tenant was not able to live in the rental unit which he said was from May 5 – May 28. He did not quantify what amount she sought with respect to her claim that she could not be in the rental unit.

As the amount of compensation requested by L.C. on behalf of the Tenant was inconsistent and at times unclear throughout his testimony I asked to hear from the Tenant directly.

The Tenant testified that she was away from the rental unit for approximately one week and she could not recall what date she returned. She indicated that when she was away, she received a phone call from a friend indicating that the power was off. She did not state when she received this call or whether she immediately returned to the rental unit. The Tenant stated that when she returned to the rental unit, she discovered that all the food in her refrigerator and freezer was spoiled.

The Tenant further stated that prior to leaving the rental unit to visit her friend out of town she went shopping and paid \$250.00 for groceries; she confirmed that she did not retain the receipt. When I asked her when she went shopping she stated that it was on the same day that she received her disability benefit cheque, which she estimated to be on April 29, 2015.

The Tenant stated that when she returned to the rental unit and discovered there was no power, she stayed with another friend for three weeks.

The Tenant further testified that she spoke to the Landlord about the fact that she was not able to be in the rental unit, to which she says the Landlord replied she would need to deal with it at arbitration.

L.C. then asked to provide further evidence. He stated that the Tenant was "a bit mixed up about her groceries" and that "the amount is \$500.00".

Analysis

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant 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. In this case, the Tenant has the burden of proof to prove their claim.

The Tenant filed her original application on May 12, 2015 shortly after returning to the rental unit and discovering that the power was out. Yet, she failed to provide any photos of the refrigerator, freezer or spoiled food. While I accept the undisputed testimony of L.C. and the Tenant that her power was out in the rental unit while she was away, I am unable to find that she suffered a loss as claimed.

The Tenant failed to provide a receipt for the purchase proof of the actual amount required to compensate her for the claimed loss. As well, the evidence of L.C. was inconsistent and unclear as to the amount of groceries she purchased prior to leaving town to visit a friend. Similarly, the evidence of the Tenant as inconsistent in that she claimed \$225.00 on her application, yet testified she spent \$250.00.

L.C. stated that the Tenant left town to visit a friend for 12 days shortly after going shopping. The Tenant stated it was approximately one week that she was away. In any case, it is difficult to conceive of the Tenant making such a large grocery purchase (relative to her stated limited means) only to leave the rental unit immediately thereafter.

Most problematically to the Tenant's Application, I am unable to find that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act or agreement. The Tenant failed to submit any evidence which would support a finding

that the Landlord was responsible for providing electricity to the rental unit. In the event the Tenant was responsible for paying her own utilities, including electricity, the loss would have been directly related to her neglect, not that of the Landlord.

In consideration of the above, and on the balance of probabilities, I find that the Tenant's application for compensation for loss pursuant to section 67 is dismissed.

The Tenant, having been unsuccessful in her application is not entitled to recover the filing fee.

Conclusion

The Tenant failed to provide evidence to show that the Landlord was responsible for providing electricity. The Tenant also failed to provide evidence to support her claim for compensation for loss of food. The Tenant's application is dismissed in its entirety.

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: July 10, 2015

Residential Tenancy Branch

