



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the "Act"), for a monetary order for money owed or compensation for damage or loss under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2004. Rent in the amount of \$1,330.00 was payable on the first of each month. The tenant paid a security deposit of \$615.00.

The tenant claims as follows:

a.	Reimbursement of rent	\$2,788.00
b.	Meals purchased for 14 days	\$ 700.00
c.	BC hydro	\$ 39.00
d.	Taxi fare	\$ 28.70
	Total claimed	\$3,556.00

Reimbursement of rent

The parties agreed that the pipe leaked in the building causing water damage to the walls.

The tenant during the hearing was having difficulties with providing verbal testimony. The tenant is relying on their 2014, dairy filed as exhibit #3.

The landlord's agent testified that on July 2, 2014, maintenance on the boiler was being completed and when the water was turned on to the building and a pipe in the interior of the wall started to leaking, impacting all the occupants in the building on one side.

The landlord's agent testified that it was difficult to isolate the leak; however the plumbing company worked after hours on July 2, 2014 and temporary fixed the leak that was found between the 9th and 7th floor.

The landlord's agent testified that the restoration company was immediately contacted and they took reasonable steps to minimize the loss or damage to the tenant. The agent stated that because the building was built prior to 1991, under the Workers Compensation Board Regulations they had to have different areas of the building tested for Asbestos, in order to determine what the appropriate plan would be for repairs, which the cost of the repair exceeded \$235,772.87.

The landlord's agent testified that the tenant had full access to their rental unit; however, a dehumidifier was place in their bathroom as the walls were wet. The landlord's agent stated at that time they informed the tenant that if they needed the dehumidifier removed in order to access the shower or bathtub, to contact the building manager and they would attend the rental unit and temporarily remove the device.

The agent testified at no time did the tenant contact the office to ask them to move the dehumidifier or notify them of a problem. The agent stated that there was a slight odour from the walls being wet; however, the tenant did not inform them that they were having to sleep in the living room.

The landlord's agent testified as soon as they were able to start the repairs, they elected to do the tenant's rental unit first. The agent stated that they paid the amount of \$3,500.00 in hotel cost from August 19, 2014 to September 12, 2014, while they made the necessary repairs to the tenant's rental unit. The agent stated that they waived \$1,063.92 from the tenant's rent, paid the extra hydro the tenant incurred do to the dehumidifier and pay for the tenant's taxi cabs. The agent stated that the tenant has been fairly compensation.

Meals purchased for 14 days

The tenant testified that the kitchen in the hotels was too small to cook and there was no venting. The tenant stated as a result they incurred food cost for purchased meals for the 14 days they had stayed in the hotel. The tenant stated that they did not submit any receipts.

The landlord's agent testified that they provided the tenant with a hotel room that had a kitchen for cooking. The agent stated they are not responsible for the tenant's personal decision of buying meals out.

BC hydro

At the outset of the hearing the parties agreed that this portion of the claim has been settled as the tenant has received compensation.

Taxi fare

At the outset of the hearing the parties agreed that this portion of the claim has been settled as the tenant has received compensation.

Analysis

Based on the above, the testimony and 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 party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Reimbursement of rent

In this case, an unexpected leak occurred in the water pipes after the boiler was turned on after regular maintenance. The landlord immediately had the pipes repaired and a restoration company attended and exploratory testing had to be conducted, to determine if asbestos was a factor when determining the course of repairs.

Once the report was issued, the landlord took action and had the tenant's rental unit repaired first. I find the landlord took reasonable and appropriate steps to make the necessary repairs and within a reasonable period.

While I accept the tenant was temporarily inconvenient during this time, the tenant also had the obligation to inform the landlord if a problem existed. As an example, on August 6, the tenant writes in their diary that they were informed by the landlord that they could pull the dehumidifier out of the bathroom to bath; however, the tenant indicates that the suggestion did not require an answer. I find the tenant cannot hold the landlord responsible if they fail to tell them that a problem exists.

Further, while there was an unpleasant odour from the walls being wet, there was no documentary evidence to prove this was a health risk. I find it highly unlikely that the fire department that attended the unit on July 12, as written in the diary, would take no action if the odour was hazardous to a person's health.

Furthermore, when the tenant was required to vacate the rental unit, to remove the wet walls that were damaged and contained asbestos, the landlord provided the tenant with alternative housing at the landlord's expense. I find the landlord's action were fair and reasonable under the circumstances.

Based on the above, I find the tenant has failed to prove a violation of the Act, by the landlord.

Further, even if the tenant was entitled to compensation for the loss of use, for the time period they were residing in the rental unit, I find the tenant has been adequately compensated for any temporary discomfort or inconvenience that they may have suffered.

As the landlord paid for the tenant's hotel accommodation which far exceeds the tenant's rent. The landlord waived the amount of \$1,063.92, from the tenant's rent, although the landlord was entitled collect rent, as they provided alternative housing. The tenant was further compensated for the extra cost they incurred for hydro as a result of the dehumidifier and also for extra transportation costs. I find any further compensation would be an unjust enrichment to the tenant, when the landlord has complied with the Act. Therefore, I dismiss this portion of the tenant's claim.

Meals purchased for 14 days

In this case, the landlord had paid for a hotel room which contained a kitchen for the tenant to use. I find if the tenant failed to use the kitchen and chose to purchase a meal that was the tenant's choice. Further, the tenant provided no documentary evidence, such as receipts to support meals were purchase and I find the amount claimed excessive. I find the tenant has failed to prove a violation of the Act, by the landlord. Therefore, I dismiss this portion of the tenant's claim

Conclusion

The tenant's application is dismissed.

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, 2016

Residential Tenancy Branch

