



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that they reviewed the Tenant's evidence package and were prepared to proceed.

Issue(s) to be Decided

Is the Tenant entitled to compensation for damages?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in July 2012 and ended on or about September 21, 2015. Rent of \$750.00 was payable on the first day of each month. The Landlord has returned the security deposit to the Tenants. The rental unit was a basement suite and the Landlord lived in the upper unit.

The Tenant states that on September 15, 2015 they were out of town when they were informed by text message from the Landlord's son that a leak had occurred into their bedroom. The Tenants tried to call the Landlord back but got no response so they

called a sister who lived next door to go over and see what was wrong. The Tenant states that the sister called then back to say that the leak was worse than stated by the Landlord's son. The Tenant states that the Tenant PR flew back that night arriving in the evening to find all their furniture from the two bedrooms had been removed and placed outside by the Landlord. The Tenant states that the mattress and box spring had been placed partially under the deck and that it was raining outside. The Tenant states that Tenant PR took photos of the mattress and box spring the next morning.

The Tenant states that another family member by coincidence was called by the Landlord to shampoo or clean the mattress and that this family member also called the Tenant to ask if they wanted the mattress cleaned. The Tenant states that they told the family member not to clean the mattress. The Tenant states that the mattress, box spring, cosmetics and clothes had been damaged by the leak. The Tenant claims the replacement costs for these items.

The Tenant states that other bedroom furniture was also removed by the Landlord and that the Landlord damaged that furniture during the removal. The Tenant states that if the Landlord had called the Tenant earlier they would have removed the furniture themselves. The Tenant also states that his wife could not have moved the furniture herself and had no help to move the furniture herself when she returned that evening. The Tenant states that Tenant PR took photos of the box spring and mattress the next morning.

The Tenant claims the cost of replacing the bedroom furniture and the cost of Tenant PR's air fare home. The Tenant states that if the Landlord had called the Tenants they would not have flown back and would have had a friend or family member go to the unit to deal with the problems. The Tenant states that the photos of the furniture were taken when they moved these items from the garage. The Tenant states that a few items had been placed in the garage. The Tenant also states that all the furniture was placed outside by the door of the basement unit. The Tenant states that when he moved the dresser from the outside a few days later he noticed it was damaged.

The Landlord states that they were informed by their son on the morning of September 15, 2015 that a leak occurred from the washing machine connection to the water source and that it was entering the basement unit. The Landlords states that they immediately called the Tenant but there was no answer so their son texted the Tenants with the news. The Landlord states that the Tenant's mother in law arrived very shortly after and agreed that the Landlord should remove the mattress and the clothing that had been on the mattress. The Landlord states that the Tenants gave them permission to enter the locked bedroom with a screw driver as the Tenants had the key to that room with them. The Landlord states that the mother in law stayed at the unit for a couple of hours while the Landlord removed the items. The Landlord states that nothing other than the mattress and clothing from the first bedroom was removed. The Landlord states that they did not move out any other furniture. The Landlord states that the person they called that turned out to be the Tenant's relative was not called to shampoo the mattress but only the carpets. The Landlord states that the Tenants had stored furniture in the garage as they were moving out of the unit. The Landlord states that the damage to their house was greater than just the damage to the basement unit. The Landlord states that their insurance covered the damage to the house but not the Tenant's personal belongings. The Landlord denies doing anything to cause the leak or that they were negligent in relation to the Tenant's belongings. The Landlord states that they have no idea who moved the Tenant's furniture.

The Tenant states that the Landlord asked him to sign a document agreeing to the receipt of a return of half the rent and the security deposit plus \$700.00 for damages to their furniture. The Tenant states that the copy provided by the Landlord contains sentences that were not there when the Tenant signed the document. The Tenant states that he took a photo of the document but did not provide a copy of this photo as evidence. The Tenant states that despite the original agreement to pay the Tenant for damages to their furniture the Landlord changed its mind and cancelled the cheques but did give the Tenants cash for the return of the rent and security deposit. The Landlord denies that the document was altered and states that the Tenant was given a copy of

the document. The Landlord states that the cheques referred to in this document were cancelled as the Tenants wanted cash.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party.

There is no evidence to support that the Landlord either caused the leak or was negligent in causing the leak. The evidence supports that upon discovery of the leak the Landlord took immediate measures to both reduce further damage to the Tenant's belongings and to notify the Tenant of the damage to their belongings. While the Tenant argues that the Landlord was negligent in moving out the Tenant's furniture, I note that the Tenants had family members present to represent their interests and I accept that at least one family member authorized the removal of furniture to the outside. I also consider that the mattresses would already have been damaged to some extent from the leak at no fault of the Landlord.

The one Tenant was present in the evening and could also have taken action if their belongings were being damaged any further by being placed outside. I do not accept that simply because one Tenant could not move the furniture on its own that the Tenant's obligation to mitigate their damages was removed. I do not consider the Landlord's initial offer to provide compensation to the Tenants to be evidence that the Landlord caused damage to the Tenant's belongings.

For the above reasons I find that the Tenant has not substantiated on a balance of probabilities that the Landlord either caused the damage to their belongings or were

negligent in responding to the leak and the damage to the Tenant's belongings from the leak. I therefore dismiss the Tenant's application.

Conclusion

The Tenants' 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: October 7, 2016

Residential Tenancy Branch

