Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMBER PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNSD MNDC FF

Introduction

Both parties attended the hearing although the landlord was 12 minutes late. I reviewed the evidence taken to that time with her and she said she agreed with those facts. Both parties gave sworn testimony and agreed the tenant served the landlord with the Application for Dispute Resolution personally but had not served their forwarding address in writing yet. I find the Application was served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) An Order to return double the security deposit pursuant to Section 38;
b) A Monetary Order for damages and loss of peaceful enjoyment due to a flood in their unit while the landlord's contractor was doing a repair; and
c) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the tenant proved on the balance of probabilities that they are entitled to compensation for damages and to the return of double the security deposit according to section 38 of the Act? If so, in what amount?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to present evidence and make submissions. Both parties agreed the tenant paid a security deposit of $550 in January 2016 and agreed to rent the unit for $1100 a month on a fixed term lease to December 31, 2017. On February 5, 2016, the tenant's water heater malfunctioned and a plumber tried to fix it but something went wrong and there was a flood. As a result, the tenant had to vacate his unit on February 5, 2016 and did not return until March 28, 2016. He paid rent for February but none for March and April and vacated the unit entirely on April 30, 2016. The landlord said they were able to re-rent for May 15, 2016.

The tenant rented from his parents in a different municipality for 7 weeks due to the restoration work on his unit. He claims $500 a week for 7 weeks ($3500) for the cost of re-renting. He also claims $4,371.25 for food he had to discard. He said when he returned to get his food, the floor was being laid and he could not go in for 2 days because of the chemical spray being used. He stated that exposure to this chemical spray must have infected his food which was in the cupboards and claims his child was ill when she tried to eat some of it. When queried about the large cost of this food in his cupboards, he said it was very expensive like $800 for some cookies. He provided receipts from various stores for items he rebought but not for the items discarded. He also claims $94.50 for bridge tolls for he said renting in a different municipality caused him to have to use a toll bridge.

In addition, he claims $134 for his TV and internet which were still operational while he could not live in the unit; he said hydro has reimbursed their bill so withdraws that claim. He claims $620.74 for eating in restaurants and when queried said he just put in the receipts as instructed. He would normally eat in a restaurant about once a week. He claims $250 for additional gas to get to work but said he had not calculated the difference in cost caused by his new location but just put in the receipt.

He provided evidence that the plumber's insurer paid him $3500 compensation already.

The landlord agreed the basic facts about the flood were correct but said it was an accident, not their fault, and they acted immediately to fix the problem and the plumber's insurance had paid money to the tenant. She said their insurer had offered the landlord compensation for rental loss in March and April but she was unsure if the boss had accepted it yet. The tenant said the landlord's insurer had told him the landlord got $2200 for rental loss due to his problem. The tenant added that it must be a breach of his lease that the landlord never communicated with him or updated him regarding the repairs.

The landlord said the tenancy agreement specifically states the tenant must have his own all risks tenant's insurance. The tenant said he did not have insurance. The landlord said utilities are not included with the tenant's rent and they are his own service. It is his responsibility to cancel his own services if he is not using them. She said they feel sorry that this happened but lost food items, restaurants and gas might have been covered under his tenant policy if he had obtained it according to the terms of his lease. .

In evidence are statements of the parties, photographs, emails, a letter from the an insurer saying the landlord was paid rental loss for February and March, 2016 and

should reimburse the tenant for these months if he paid rent for them and also offering $3500 to settle the claim against the plumber (which the tenant accepted), some letters from the landlord regarding rent owing and breach of the fixed term lease, and many grocery receipts and rent receipts.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act.* Accordingly, an applicant must prove the following:

1. That the other party violated the *Act,* regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find as fact that there was a flood caused by a plumber hired by the landlord to do repair work in the tenant's unit. While this caused the tenant to incur some expenses, I find it was not the landlord's fault. I find the weight of the evidence is that there was a problem; the landlord arranged repair and an accident happened causing a flood. I find the landlord did not violate the Act, regulations or tenancy agreement. I find insufficient evidence that the landlord through act or neglect caused the tenant's losses. I find the tenant entered this same claim with the plumber's insurance and settled with the plumber's insurance for $3500 "all inclusive". I find he has been sufficiently reimbursed for his loss and he settled this claim which was essentially the claim before me today.

I find as fact that he paid the landlord rent for February 2016 but none for March or April 2016 although he lived in the unit for part of the time. The plumber's insurer stated in their letter that the landlord had been reimbursed for rental loss for February and March

2016 by the landlord's insurer so the tenant should be able to claim reimbursement of rent for February 2016. However, I find the landlord pays for their own insurance and there is insufficient evidence as to which months their insurer reimbursed. The landlord in the hearing only said they had been offered two months rent reimbursement.

I find as fact the landlord lost two months rental, March and April, 2016, and the tenant did not pay rent for these months although he lived there so I find him not entitled to recover from the landlord's insurer money he did not pay. I dismiss this portion of his claim. I also find the landlord should not be claiming rent against him if they have been reimbursed for those months.

I find the landlord is not the tenant's insurer and the tenant breached the lease by not obtaining his own insurance which may have covered his losses. He also claimed the landlord did not keep him updated and informed. I find insufficient evidence to support this allegation. I find the Act does not provide that the tenant must be kept up to date on repairs and I find evidence that the landlord did communicate with him by email and referred him to their insurer who was handling the restoration. I dismiss his claim.

In respect to the security deposit, the *Residential Tenancy Act* provides:

Return of security deposit and pet damage deposit
38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of
(a) the date the tenancy ends, and
(b) the date the landlord receives the tenant's forwarding address in writing,
the landlord must do one of the following:
(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
(6) If a landlord does not comply with subsection (1), the landlord
(a) may not make a claim against the security deposit or any pet damage deposit, and
(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find as fact that the tenant has not served the landlord with his forwarding address in writing so his claim for the return of his security deposit is premature. I dismiss this portion of his claim and give him leave to reapply.

Conclusion:
I dismiss the claim of the tenant for the refund of the security deposit and **give him leave to reapply** after he has served his forwarding address in writing to the landlord.

I dismiss the balance of his claim without leave to reapply as I find he settled “all inclusive” and was reimbursed for this same claim by the plumber’s insurer. Also, I find a large portion of his claim is items which would have been the subject of a claim on a tenant’s insurance policy. However he chose not to obtain tenant insurance in contravention of his lease. The landlord is not the tenant’s insurer. I find him not entitled to recover his filing fee due to his lack of success.

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: December 14, 2016

Residential Tenancy Branch