



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, FFT

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks the following remedies:

1. compensation under section 67 of the Act for various pertaining to a flood from a washing machine;
2. a reduction in rent for services required by a tenancy agreement but not provided, pursuant to section 65(1); and,
3. an order for compensation for recovery of the filing fee, pursuant to section 72(1) of the Act.

A dispute resolution hearing was convened, and the tenant and the landlords attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to compensation under section 67 of the Act for various pertaining to a flood from a washing machine?
2. Is the tenant entitled to a reduction in rent for services required by a tenancy agreement but not provided, pursuant to section 65(1)?
3. Is the tenant entitled to a compensation for recovery of the filing fee, pursuant to section 72(1) of the Act?

Background and Evidence

The tenant testified that the tenancy commenced on June 1, 2018, and that the tenancy was a fixed term tenancy to end on May 31, 2019. Monthly rent was \$1,450.00, and the tenancy included free laundry and the tenant was obligated to pay 40% of the hydro. A copy of the written tenancy agreement was submitted into evidence.

The tenant moved in on May 28, 2018, and on June 15, 2018, a flood in the rental unit (a basement suite) occurred. The flood was a result of issues between the sump pump and the washing machine, and there were three or four floods, the tenant submitted. The washing machine was an old machine with a 25-gallon capacity. As a result of the flood, the tenant had to reside in a hotel for a period of 28 days. Her insurance company paid for the accommodation.

The washing machine being inoperable after the flood was a significant inconvenience, as the tenant has three children and does two loads of laundry a day. As a result, the tenant had to take her laundry to the laundromat. She seeks compensation in the amount of \$325.00 for laundry expenses.

Eventually, the tenant vacated the rental unit on October 1, 2018. Finally, she noted that the rental unit is an illegal suite not permitted under municipal bylaws as such.

In addition to the above-noted expenses for laundry, the tenant seeks compensation for paying rent for August and July 2018 and seeks compensation in the amount of \$12,500.00 for undue hardship due to flooding.

The landlords testified that the tenant moved out on November 1, 2018, not October 1, 2018. The male landlord testified about the cause of the flooding and that it was a sump pump issue. He stated that there was no reason for the tenant not to use the washing machine, and that she would simply need to do smaller loads.

After the flooding occurred on June 15, the tenant left on June 26 in order for the remediation company to come into the rental unit and take care of repairs. The landlord referred me to the tenant's evidence in which the tenant was advanced \$6,500.00 by her insurance company as a result of the flooding and inconvenience. He further testified that the tenant did not pay rent for July.

In August, the flooring and carpets were replaced, and the tenant had to leave again for

another two weeks. The tenant's insurance company paid for her to stay in a hotel. He said that she was gone from August 19 to August 27, 2018.

Regarding the washing machine itself, the landlord testified that they found it had been damaged (presumably by the tenant) and that the dial did not work properly, and the timer was faulty. The machine is perhaps 10-15 years old, but that it "is hard to say." He commented that while the machine could flood again, it has not flooded again, and they have had used of the machine ever since.

The landlord provided testimony in regard to their estimate as it relates to the cost of doing laundry, submitting that a load costs \$2.00 (as opposed to \$5.00 a load). They subsequently reduced rent to compensate the tenant for the reduced loads that could be done in the machine.

In rebuttal, the tenant testified that the washing machine did not work at all since June 15, 2018.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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

Section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

In deciding whether compensation is due, I must apply the following four-part test:

1. Has a party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. If yes, did loss or damage result from that non-compliance?

3. Has the party who suffered loss or damage proven the amount or value of that damage or loss?
4. Has the party who suffered the loss or damage that resulted from the other's non-compliance done whatever is reasonable to minimize the damage or loss?

I should note that the tenant has vacated the rental unit since filing for dispute resolution and as such I will not consider her claim for an order to reduce rent for services agreed upon but not provided. Any such order would be moot, as the tenancy is ended. However, I will consider her claim for compensation related to the cost of the laundry and for undue hardship, inconvenience and stress.

In this case, the tenancy agreement clearly stated that the landlord was to include free laundry as part of the tenancy. The tenant testified and submitted that the washing machine did not work after June 15, 2018. The landlord testified that the washing machine did, in fact, work since June 15, 2018, though they reduced rent on the basis that the same quantity of laundry could not be done by the tenant.

Based on the oral evidence of the parties, I find that the landlords failed to comply with the tenancy agreement by providing free laundry as was available to the tenant at the start of the tenancy. While the landlord testified that the washing machine still worked after the flood, he stated that the load quantity had to be lowered, which in effect changes the services provided under the tenancy agreement. Indeed, the landlord reduced the rent to account for the lesser-sized loads. But for the landlords' non-compliance with the tenancy agreement, the tenant would not have suffered losses related to the laundry.

That having been said, the tenant has not proven the amount of her losses because of the washing machine and flooding issues. While she provided what essentially amounts to an estimate of costs (e.g. \$5.00 per load, 7 loads per week), I do not find that these amounts represent the actual, final cost to the tenant. The tenant did not submit a log, or record, of the dates that she visited the laundromat, or a tally of the running costs of doing laundry. Nor did the tenant submit receipts for the taxi rides to the laundromat and back.

Finally, the "time out of house" claim was not explained to me, in terms of what and why the tenant is entitled to this compensation. While the job of a parent is often a thankless one, parents are not compensated on a dollar per hour basis for this job.

As such, I do not find that the tenant's claims related to the cost of the laundry have been proven. I will therefore not apply the remainder of the four-part test in assessing the claim for compensation. I therefore dismiss this aspect of the tenant's claim.

Regarding the tenant's claim for compensation for rent, the tenant advanced no argument or submission in respect of how or why she is entitled to compensation for having paid rent under the Act. As such, I dismiss this aspect of her claim.

Finally, in respect of the tenant's claim for compensation in the amount of \$12,500.00 for undue hardship, stress, and inconvenience, the tenant made no submission in respect of how she calculated this amount. While I understand and empathize with the tenant that she was undoubtedly inconvenienced by the flood, especially with three children in tow, to seek compensation of this amount requires substantial documentary proof (such as a medical report reflecting the tenant's stress or mental health that may have resulted from the flood and laundry machine issues). Further, the tenant did not make any submissions or argument as to what section of the Act, the regulations, or the tenancy agreement were breached by the landlords that would give rise to a compensatory claim of this nature. As such, I dismiss this aspect of her claim.

As the tenant was unsuccessful in her claim, I do not grant a monetary order for recovery of the filing fee.

Conclusion

I hereby dismiss the tenant's application 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 Act.

Dated: November 19, 2018

Residential Tenancy Branch