



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The "male tenant" did not attend this hearing, which lasted approximately 20 minutes. The two landlords, male landlord (landlord") and "female landlord," and the female tenant ("tenant") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that she had permission to represent the male tenant at this hearing. The landlord confirmed that he had permission to represent the female landlord, as she did not testify at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' application and the tenants were duly served with the landlords' evidence.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2019 and ended on January 31, 2020. Monthly rent in the amount of \$2,100.00 was payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenants and the landlords returned it to the tenants. A written tenancy agreement was signed by both parties.

The tenants seek a monetary order of \$1,912.55, plus the \$100.00 application filing fee. The landlords dispute the tenants' entire application.

The tenant testified regarding the following facts. The rental unit was uninhabitable, due to a flood that occurred on January 8, 2020. The landlords did not cause the flood and there is no proof that they did. There was a bad smell from the flood. The landlords were negligent in dealing with the flood, as there was a water stain in the tiles of the ceiling, when the tenants first did a walk through of the rental unit. The plumber who dealt with the flood said that this was the same area where the flood occurred. The tenants were unable to get a letter from the plumber, as they did not stay in contact with the plumber after they moved. The tenants did not notify the landlord of the water buildup in the window sills, assuming it was condensation from being a ground floor unit. The tenants could not live in the rental unit and went to the male tenant's father's house, where they did not incur any costs, from January 8 to 31, 2020. The tenants could not afford a hotel or any other place to live. The tenants determined through their own calculations that there was an increase in hydro costs, of \$129.49. The tenants had to move out of the rental unit, due to the flood.

The landlord testified regarding the following facts. The tenants lived in the rental unit the whole time, there was no flood, and it was not as drastic as the tenants say, it was simply areas of humidity. The tenants did not obtain tenants' insurance for the rental unit, which they should have done, but the landlords did not know to ensure it was done. The landlords asked strata for compensation for the inconvenience, but strata said they could not cover the tenants' losses. The landlords shared the hydro 50% with the tenants, and the hydro bills were higher in December and January, when the tenants

were actually living there and using hydro, compared to February and March, when it was only \$50.00 for two months, when the tenants were not living there.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application of \$1,912.55 without leave to reapply. I find that the tenants failed parts 2, 3, and 4 of the above test.

The tenant did not go through any of the tenants' documents during the hearing. The tenant did not provide detailed information or specific evidence about the tenants' application during the hearing. She did not go through a monetary order worksheet or go through any monetary breakdown during the hearing.

I find that the tenants voluntarily vacated the rental unit. The tenants did not prove that they were forced to move. The fact that the tenants chose to leave when they did, was up to them. I find that the tenants elected to end their tenancy first on January 31, 2020 and then filed this application after on March 3, 2020.

The tenant agreed during the hearing that the landlords did not cause the flood. She agreed that the tenants had no proof that the flood was the landlords' fault. She agreed that the tenants did not purchase tenants' insurance for the rental unit. The tenants moved into the rental unit, despite noticing a water stain on the ceiling tiles, when they first completed their walk through. The tenants failed to obtain a letter from their plumber indicating that the flood was caused in the same area as this water stain. The tenant agreed that she did not notify the landlords about any water issues, despite noticing water buildup in the window sills inside the rental unit.

I find that the tenants failed to show that the landlords did not adequately deal with the water issues, indicating in their application, that a plumber came to rectify the issue, a restoration crew cleaned up, and humidifiers were used to dry the water. Therefore, I find that the tenants failed to show that the landlords caused the flood, knew about pre-existing water issues, or failed to adequately deal with the flood, once it occurred at the rental unit.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the \$100.00 filing fee from the landlords.

Conclusion

The tenants' entire application is dismissed 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 *Residential Tenancy Act*.

Dated: July 10, 2020

Residential Tenancy Branch