



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-T

Introduction

The tenant applies for a monetary award for recovery or recalculation of overpaid rent and for damages, including mental/emotional distress resulting from a flood in her rental unit on December 9, 2019.

Both parties attended the hearing, the corporate landlord by its agent Ms. AD, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the landlord owe the tenant a rebate of rent? Has the landlord, by act or inaction, caused the tenant's rental unit to flood? If so, what is a fair assessment of the damage or loss the tenant has suffered as a result?

Background and Evidence

The landlord operates a business at a ski operation. It houses its workers in a dormitory style accommodation. In the tenant's case, she shared a room containing four beds

with two other people. They shared a common kitchen and bathroom facilities with other workers.

The tenancy started October 31, 2019. The monthly rent was \$650.00, due on the first of each month. The rent payment procedure was that the landlord would deduct roughly one half the rent of each of the tenant's biweekly paycheques. The tenant paid a \$325.00 security deposit which had been returned to her.

It is not disputed that on December 9 a water main owned and maintained by the local government broke. Water from the main entered the nearby dormitory and flooded the tenant's room. A significant number of her personal possessions were destroyed as a result. She has listed the major items in her Monetary Order Worksheet.

The landlord immediately relocated the tenant to new accommodation. The tenant left her job and her rental unit on or about December 29.

In January the tenant received her paycheque for December. The landlord had deducted \$356.00 from it for the balance of December rent. Later, the landlord made an application to recover unpaid rent (related file # shown on cover page of this decision).

After a hearing on July 17, 2020, the landlord was awarded \$335.03 for unpaid December rent. The tenant argues that this same amount was part of the money deducted by the landlord from the paycheque the tenant had received back in January.

The tenant testifies that a result of the flood, the relocation, the loss of her belongings, the promises she says the landlord broke and the multiple (three) applications to the Residential Tenancy Branch, she has suffered significant mental and emotional distress. No particular details were provided but she inferred that she was taking medication for her condition.

The tenant did not testify about the personal items she lost nor how the values she attributed to them was determined.

Ms. AD testifies that the landlord had nothing to do with the flood and that it took a variety of measures afterwards to assist those like the tenant who were affected by it. She says the affected employees were housed in better accommodation at the landlord's expense. The landlord encouraged a community fund through which the

tenant received over \$2000.00 in cash to help her with her loss. It assisted in a clothing drive for its affected employees.

Analysis

Rent Repayment

I have reviewed the decision of the arbitrator in the related matter heard in July. It is apparent the arbitrator dealt with the same argument the tenant made here; that her January pay had the December rent deducted from it. The decision in that matter reports that the tenant had provided insufficient evidence to demonstrate that this amount was deducted from her paycheque in January. She was not granted leave to bring another application or to have the question reheard.

As a result, even had the tenant's argument been persuasive, I am not in a position to reconsider the matter. A decision has been made on the same issue between the same parties. It cannot be relitigated unless a higher authority on appeal or an adjudicator considering a review under the *Residential Tenancy Act* authorizes it (the tenant did apply for review but was unsuccessful).

Flood Loss and Damage

In order for the landlord to be liable for the tenant's loss of her physical belongings the landlord must be shown to have done something it should not have done, or failed to do something it should have done and it resulted in the flooding. The evidence indicates the contrary. The flood was caused by the failure of a water line under the care and control of someone else.

The tenant's claim for loss of her items must be dismissed.

In regard to the tenant's claim for mental/emotional distress, her evidence about landlord promises is, at best, scant and leaves no reasonable basis to conclude the landlord was at fault. Distress caused by other factors, like the flood itself and the turmoil afterward, are not the landlord's fault. Evidence about the tenant's mental or emotional condition was lacking, other than a short subjective reference.

As a result, I must also dismiss the tenant's claim for mental/emotional distress.

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: September 10, 2020

Residential Tenancy Branch