



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUMMERLAND SENIOR CITIZENS
HOUSING and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 1:54 p.m. to enable the landlord to participate in this scheduled hearing for 1:30 p.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The tenant confirmed that they understood.

The tenant testified that the landlord was personally served with the hearing documents and evidentiary materials on February 9, 2022 by a process server. The tenant provided a signed affidavit from the process server affirming that they had served an employee of the landlord. In accordance with sections 88 and 89 of the *Act*, I find the landlord duly served with the tenant's application and evidence package. The landlord did not submit any written evidence for this hearing.

Issues(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began in August 2016, and ended on October 26, 2021. Rent was set at \$420.00, payable on the first of the month. The tenant testified that the landlord had returned their security deposit at the end of the tenancy.

The tenant testified that they had filed this application to seek reimbursement of losses they had to incur because the landlord failed to fix the leaking roof. The tenant testified that the roof was leaking and stated that “despite numerous verbal and written requests since January of 2020”, the landlord failed to maintain or repair the roof to meet health and safety standards. The tenant testified that the landlord had responded that they did not have the funds to repair the roof, and placed a tarp on the roof instead.

The tenant testified that due to the leak, black mould started to grow in the rental unit, and water had pooled inside as well. The tenant stated that they had requested to be moved to a different rental unit, but the landlord refused. The tenant testified that the mould and water affected their health, as well as the health of their pet. The tenant testified that they had to do laundry every day, and their personal belongings were damaged. The tenant submitted photos of the rental unit and their belongings, as well as receipts for a vet visit on November 9, 2020, as well as a doctor’s note for a visit on September 21, 2021 stating that the tenant “is experiencing severe stress and anxiety which appears to be directly related to her ongoing housing difficulties”. The tenant moved out approximately a month after this visit to their doctor. The tenant testified that they had no choice, but to move out.

The tenant is seeking reimbursement for the following expenses in relation to the move, and damage.

Item	Amount
Gas used for appointments, and looking for housing	\$135.00
Doctor’s note	30.00
Receipt for vet visit	284.13
Chiropractor visit for hurt back caused during move	32.00
Moving supplies	6.70

Moving supplies	22.47
Legal fees to find property owner	20.00
Food lost from freezer as nowhere to store	200.00
Lost income during time off	600.00
Total Monetary Order	\$1,330.30

The tenant provided a letter from their employer confirming the lost income due to the move, as well as receipts for the expenses claimed.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *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.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide

evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

(a) claims reimbursement for those amounts from the landlord, and

(b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b);

(c) the amounts represent more than a reasonable cost for the repairs;

(d) the emergency repairs are for damage caused primarily by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

Under Section 33 (1)(c) of the *Act*, a leaking roof is considered an emergency repair. However, in review of the evidence and testimony before me, I find that the tenant failed to demonstrate that they had followed the required steps above. Although the tenant's application states that they had made both written and verbal requests to the landlord, the tenant did not provide proof of any of these requests in their evidentiary materials, whether this was by way of a witness statement, a copy of the written requests, or copies of any responses from the landlord.

Furthermore, despite the fact that the roof had been leaking since January 2020, the tenant did not provide evidence to support that they had attempted to resolve this issue prior to moving out. As stated above, the tenant did not provide evidence to support that the written or verbal requests made, nor did the tenant demonstrate that they had filed for dispute resolution in the nineteen month period prior to moving out. Although the tenant stated in their application that they had requested to be moved to a different suite, the tenant did not provide a copy of this request in their evidentiary materials, nor

the reply from the landlord refusing to do so. Although I am highly sympathetic towards the fact that the tenant felt extremely stressed, anxious, and sick, the tenant still has a duty to mitigate any losses that may be incurred.

Residential Tenancy Policy Guideline #5 addresses the duty of the claimant to mitigate loss:

“Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.”

I am not satisfied that the tenant had sufficiently supported that the tenant had no choice but to move out. I find that the tenant failed to demonstrate that they had taken reasonable steps to mitigate the above losses associated with this claim, and therefore the landlord cannot be held responsible for the tenant's decision to find new accommodation. Accordingly, I dismiss the tenant's claims for losses associated with the move without leave to reapply.

The tenant also requested reimbursement of the doctor's note, and vet bill for their dog. Despite the tenant's references to how the mould had affected the health of the tenant and their dog, I find that the documents provided do not specifically confirm that the health issues were caused by the mould in the rental unit, or any contravention of the Act or tenancy agreement by the landlord. As I am not satisfied that the tenant suffered these losses due to the landlord's contravention of the *Act*, I dismiss these remaining portions of the tenant's application without leave to reapply.

Conclusion

I dismiss the tenant's entire 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 *Residential Tenancy Act*.

Dated: October 03, 2022

Residential Tenancy Branch