



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC

Introduction

This hearing dealt with the tenant's application for compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

Issue(s) to be Decided

1. Whether the tenant has established that he is entitled to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement, and if so, the amount.

Background and Evidence

From undisputed testimony, I find that the tenancy commenced approximately 5 years ago and that the tenant was paying rent of \$620.00 per month. In November 2008, the tenant vacated the rental unit and moved to another rental unit offered to him by the landlord. The tenant is paying the same amount of rent at the new rental unit.

The tenant is seeking compensation of \$3,416.00 for personal property that was allegedly damaged by mould. The tenant testified that upon returning home in July 2008, after being away for a couple of weeks, he heard a hissing sound and his windows were steamed up. He verbally reported the problem to the landlord. The landlord sent a plumber who repaired a hot water pipe spraying hot water on to the subfloor beneath the tenant's unit. The tenant acknowledged that the plumber came to

his unit; however, the tenant informed the plumber that the leak was not in his unit, but, rather in the space beneath his unit. The tenant opened the windows and aired out the rental unit. Shortly thereafter the tenant noticed the linoleum flooring bubbling in his bathroom and reported it to the landlord. The tenant suggested that the landlord repair the flooring while he was out of town for a couple of weeks in August. Upon return home in September the tenant discovered mould growing on his walls, countertops, clothing and other personal belongings. The tenant explained that did not report the mould growth to the landlord since he was of the understanding that the unit was slated for renovations, so the tenant wiped the mould down with bleach and washed his personal property best he could. In October 2008, the condensation on the windows worsened and the tenant described how he had to keep towels at the bottoms of the windows to catch water.

The tenant testified that he is still using the couch that is mouldy as he cannot afford to replace it and that he has thrown out many items damaged by the mould. The tenant explained that he estimated that he has lost approximately \$3,416.00 of personal property by using the lowest replacement cost he could find at retail outlets.

The landlord testified that the tenant reported the hot water leak on July 22, 2008 and that a plumber was immediately called to fix the leak. The landlord testified that the maintenance technician asked to see the tenant's floor when the tenant complained about the bubbling floor; however, the tenant did not want the landlord to replace the floor until the tenant was out of town. The maintenance technician informed the tenant to fill out a work order to have the floor repaired; however, the tenant did not complete a work order. The landlord was of the position that they were unaware of a mould issue as the tenant would come to the office to pay his rent in person and made no complaints of mould. The landlord explained that it was not until the tenant complained of lack of heat on November 13, 2008 and attended the rental unit that the landlord become

aware of excessive humidity in the rental unit. The landlord did not see mould on the walls but requested the tenant to relocate to another unit.

With respect to the request for a work order, the tenant testified that he had never before been requested to provide a work order for maintenance issues and that a work order was never presented to him until November when he complained of the lack of heat. The tenant explained that previous landlords were aware that the rental unit was prone to mould and had indicated to him that renovations were required in the unit so he saw no point to continue complaining of mould issues.

The landlord indicated that the rental unit was not slated for renovations and that it is their policy not to enter a rental unit to conduct repairs without a work order. The landlord also explained that after the tenant moved out, the windows were left open a crack and the rental unit is no longer showing signs of excessive humidity. The landlord questioned the value of the items being claimed by the tenant as the landlord has not seen evidence of any belongings being thrown out. The landlord also pointed out that tenant insurance is a requirement of the tenancy agreement and that the tenant had failed to obtain insurance.

Analysis

A party making a claim for damages against another party must first show that the other party violated the Act, regulations or tenancy agreement. If there is a violation, the party making the claim for damages must show that he did whatever was reasonable to minimize the damage or loss suffered.

The Act requires a landlord to repair and maintain a property so that it meets health, safety and building laws and is suitable for occupation by a tenant. I do not find sufficient evidence that the landlord anticipated or ought to have known that the water

pipe was going to leak and I am satisfied that the landlord acted quickly in having the leak repaired when the leak was reported.

In hindsight, it is apparent to me that the water leak caused an excessive amount of condensation to accumulate in the rental unit, including the tenant's furniture and other property. Aside from the condensation on the windows, excessive moisture was first evidenced by the bubbling in the linoleum flooring. Both the tenant and the landlord knew of the bubbled flooring in July 2008; however, neither party reacted sufficiently or did whatever was reasonable to minimize the damage. The tenant did not complete a work order as was requested of him and the landlord did not enter the rental unit to ascertain the cause of the bubbled floor despite being aware of a recent water leak. As the landlord was informed at the hearing, the landlord does not need written permission of the tenant to attend to repair issues in a rental unit. Rather, the landlord can serve a Notice to Enter upon the tenant and attend to repair issues quickly.

The persistent excessive humidity and mould growth was further aggravated as more and more time passed as a result of the tenant not making any further complaints to the landlord or enquiring about completing a work order and leaving the rental unit while he went out of town for weeks at a time. From the tenant's own testimony, the tenant first saw signs of mould growth in September 2008 yet never reported it and it was not until mid November 2008 that the landlord became aware of mould or humidity by attending the rental unit to address the heat issue. I also find the excessive humidity was compounded by the lack of sufficient heat in the rental unit.

Upon review of the tenancy agreement, I agree with the landlord that the tenancy agreement requires the tenant to carry "sufficient insurance to cover his property against loss or damage from any cause". I understand the tenant is of the position that he cannot afford tenant insurance; however, the tenant's inability to afford tenant

insurance does not mean the landlord automatically assumes responsibility for the replacement of the tenant's property should the tenant's property become damaged.

In light of the above findings, I hold the tenant and landlord jointly responsible for not sufficiently reacting to the issue of water damage in the rental unit. Since I have found the landlord partly responsible for not repairing or maintaining the rental unit so that it is habitable by a tenant, I am satisfied that the landlord has violated the Act. However, where a landlord is found negligent, the tenant must verify the quantum of his loss. I find the tenant provided inadequate evidence of the items he allegedly owned and had to dispose of. The tenant did not provide any receipts or photographs of the items allegedly damaged and did not provide adequate evidence of their value. Therefore, I give the tenant a nominal award.

I find that had the tenant had insurance, his property would have been likely covered for loss. Had the tenant had insurance, the tenant would have likely paid a deductible of say \$500.00. Since I have found the landlord negligent, in part, I order the landlord to compensate the tenant \$250.00.

The tenant is authorized to deduct \$250.00 from a subsequent month's rent in satisfaction of this award and the landlord must consider the rent paid.

Conclusion

The tenant is awarded \$250.00 and may deduct it from a subsequent month's rent.

February 17, 2009

Date of Decision

Dispute Resolution Officer