

Dispute Resolution Services

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

DECISION AND REASONS

Dispute Codes:

CNR, MT, MNDC, OLC, PSF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order to allow the tenant more time to dispute the notice to end tenancy and for an order to cancel the notice to end tenancy. The tenant also applied for compensation for loss under the *Act*, for an order for the landlord to comply with the *Act* and to provide services.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The notice to end tenancy was served on the tenant on May 09, 2009 and the tenant moved out on June 10, 2009. Accordingly, the portions of the tenant's application regarding more time to dispute the notice, to cancel the notice and for the landlord to comply with the *Act* and provide services are irrelevant and are hereby dismissed.

Therefore, this hearing only dealt with the tenant's application for a monetary order for compensation under the *Act*.

Issues to be decided

The tenant stated that one room in the rental unit was not available for use due to the presence of a foul odour and therefore the tenant applied for a rebate in the monthly rent. Is the tenant entitled to compensation for loss under the *Act*?

Background and Evidence

The tenancy started on November 16, 2006. Rent was set at \$850.00 payable in advance on the first day of each month.

The tenant stated that right from the start of the tenancy, she noticed a foul odour in one of the bedrooms. She reported this to the landlord in November 2006 (the first month of the tenancy) and the landlord immediately sent a professional plumber to resolve the problem. The tenant stated that the problem returned after some months.

The tenant stated that this cycle of events occurred approximately three to four times through the tenancy, when she would advise the landlord of the odour, get help immediately, and have the problem resolved for a few months, before it returned.

The tenant stated that due to the recurring odour, the room was uninhabitable and therefore she is claiming compensation of \$800.00 for loss of use of the bedroom. The tenant did not file any evidence to support her monetary claim.

The landlord argued that the tenant first contacted her on February 09, 2008 to report an odour and not in November 2006 as the tenant had stated. The landlord sent in a professional plumber who found that the sewer pump was clogged with products that were flushed down the toilet. The landlord stated that she incurred a cost of approximately \$300.00 to replace the pump. The tenant admitted that her daughter may have flushed items down the toilet and caused the problem.

The landlord stated that the next time she heard from the tenant regarding a complaint, was on May 25, 2009 and again the landlord sent in a professional plumber who reported the presence of mildew. The landlord stated that the tenant discovered a leak in the shower rod but did not report it. The tenant's brother fixed the leak. However, this leak may have been ongoing for a long time, unknown to the landlord and could have caused mildew in the walls and carpet. The landlord also stated that after the tenant moved out, she found that the room smelled of kitty litter.

Analysis

In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the other party in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

The tenant bears the burden of establishing each claim on the balance of probabilities. The tenant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the tenant must show that reasonable steps were taken to address the situation and to mitigate the damage or losses that were incurred.

In this case, the tenant has not filed any evidence to support her claim of the existence of the damage. In addition, she is not able to establish that the problem resulted from negligence on the part of the landlord. By the tenant's own admission, she sublet the room to her brother, sister, daughter and a friend at various times through the tenancy and therefore has established that she did have the use of the room. The tenant's claim does not satisfy all the components of the above test and is therefore dismissed.

Conclusion

The tenant's application is hereby dismissed in its entirety.

Dated July 06, 2009.

Dispute Resolution Officer