

Decision

Dispute Codes: MNDC, MNSD, ERP

Introduction

This hearing dealt with an application from the tenant for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, return of the security deposit, and an order instructing the landlord to make emergency repairs to the unit.

The tenant's application for compensation for damage or loss under the Act, regulation or tenancy agreement is set out on his application form under the heading: "Details of the Dispute." The tenant seeks compensation in the amount of two months' rent.

The tenant participated in the hearing and gave affirmed testimony. The tenant testified that the application for dispute resolution and notice of hearing package was delivered in person to the landlord(s) on December 7, 2009. Despite this, the landlord(s) did not appear at the hearing.

Issues to be decided

- Whether the tenant is entitled to any or all of the above under the Act

Background and Evidence

There is no written residential tenancy agreement in evidence before me for this month-to-month tenancy which began on July 4, 2009. Rent in the amount of \$665.00 is payable in advance on the first day of each month. A security deposit of \$332.50 was collected on or about July 4, 2009.

As a result of various concerns about the condition of the unit, the tenant states that he wrote two letters to the landlord, one in August and the other in October 2009. In response, the tenant states that the landlord offered to relocate the tenant to another unit following the completion of that unit's renovations. The tenant testified that he was

assured that the other unit would be available by the end of August; when it was not available by that time, the tenant says he was given assurances that it would be ready by the end of October. October became November and there was still no alternate accommodation made available to him.

The tenant submitted into evidence a copy of an undated and unsigned letter he says was his third letter to the landlord in relation to his dissatisfaction with the unit. In this letter he set out in detail his miscellaneous concerns. These include but are not necessarily limited to, mould growing in various rooms of the unit, a leaking refrigerator, a faulty sliding door, constantly running hot water from the tap in the tub, a leaking tap in the bathroom sink, and a faulty toilet. The tenant states that mould in the unit contributed to coughing and sore throats for his children, while the steady running of hot water from the tap in the tub contributed to an inordinately high hydro bill. Included in his evidence were several photographs showing mould in various parts of the unit.

Ultimately, the tenant says he reached a mutual agreement with the landlord(s) whereby the tenancy was terminated. He paid rent in the amount of \$375.00 for December, and subsequently vacated the unit on December 23, 2009. However, while a copy of the notice was not before me in evidence, the tenant also states that prior to vacating the unit he received a 10 day notice to end tenancy for unpaid rent.

Finally, the tenant said that his security deposit has not been repaid to him, but he also confirmed that he has not thus far provided the landlord(s) with his forwarding address.

Analysis

As the tenant has vacated the unit subsequent to the filing of his application, he withdrew the request for an order instructing the landlord to make emergency repairs. Despite this, for the information of the parties, attention is drawn to the provisions set out in section 32 of the Act which speak to **Landlord and tenant obligations to repair and maintain**, and section 33 of the Act which addresses **Emergency Repairs**. The full text of the legislation can be accessed via the website: www.rto.gov.bc.ca/

As to the tenant's security deposit, section 38 of the Act speaks to **Return of security deposit and pet damage deposit**, and provides in part, as follows:

38(1) Except as provided in subsection (3) or (4)(a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Further, section 38(6) of the Act states:

38(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The tenant has not informed the landlord(s) in writing of his forwarding address, and he has the option of doing so. In the meantime, I dismiss this aspect of his application with leave to reapply.

As for the tenant's application for compensation in the amount of two months' rent, I find as follows. While the photographs submitted appear to show the growth of mould in

various locations throughout the unit, the tenant has submitted no documentary evidence to support his assertion that this contributed to the discomfort and / or ill health of his children.

Further, the tenant claimed that his hydro bill was excessive as a result of the tap leaking hot water in the tub. While into evidence the tenant submitted one hydro statement with the billing date of October 1, 2009, I find this is insufficient evidence to support his claim that the bill was excessive, and / or that it was excessive as a direct result of the allegedly faulty tap.

Additionally, while the tenant claims that the landlord(s) acknowledged in writing that there were deficiencies in the unit that warranted his being relocated, there is no documentary evidence before me to support this claim.

In the result, I hereby dismiss the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement.

Conclusion

Following from all of the above, the tenant's application for return of his security deposit is dismissed with leave to reapply.

The tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement is hereby dismissed.

DATE: January 14, 2010

Dispute Resolution Officer