

DECISION

Dispute Codes: MNDC RP, FF

Introduction

This is the Tenant's application for a Monetary Order for compensation for damage or loss; for an Order that the Landlord make repairs to the rental unit; and to recover the cost of the filing fee from the Landlord.

Both parties provided documentary evidence and gave affirmed testimony at the Hearing.

Issue(s) to be Decided

Is the Tenant entitled to compensation for damage or loss, pursuant to the provisions of Section 67 of the Residential Tenancy Act (the "Act")?

Should the Landlord be ordered to make repairs to the rental unit?

Background and Evidence

The Tenant gave the following testimony:

The Tenant testified that he provided the Landlord with a work order on May 31, 2009, requesting a hole in the wall behind the dishwasher be sealed because he had mice in the rental unit and had observed them coming and going from the hole in the wall. The Tenant testified that he provided three more work orders making the same request, but the Landlord did not seal the hole in the wall until May 31, 2010. The Tenant provided copies of the four work orders in evidence, along with a copy of a letter to the Landlord dated March 27, 2010. The Tenant also provided a copy of the Landlord's letter of reply to his March 27th letter.

The Tenant testified that the Landlord hired a property management company in January, 2010, who sent a pest control company to lay traps for the mice on a monthly basis, but that the mice kept coming back.

The Tenant stated that prior to the hole being sealed he saw mice on a weekly basis. He testified that since the hole was sealed, no mice have been seen in the rental unit.

The Tenant stated that he had asked for an Order that the Landlord seal the hole in the wall, but that the Order was no longer required because the Landlord sealed the hole after the Tenant filed his Application for dispute resolution.

The Tenant seeks compensation in the amount of 15% of his monthly rent for the period of one year (the time it took the Landlord to seal the hole in the wall). Monthly rent is \$1,300.00.

The Landlord's agents gave the following testimony:

All of the agents are representatives from the management company, and were not familiar with the mouse problem prior to being hired by the Landlord in January, 2010.

The agents testified that they had hired a pest control company to provide monthly services at the rental unit. The agents stated that they received a work order from the Tenant on January 20, 2010, but received no further communication from the Tenant with respect to the issue until they received the Notice of Hearing documents at the end of May, 2010. The agents testified that they were unaware of the hole of the wall until they received the Notice of Hearing documents. The agents testified that they did not know why the hole in the wall was not investigated by the Landlord.

The agents testified that the hole behind the dishwasher was not made by mice, but was meant to accommodate a pipe from the dishwasher to the plumbing inside the wall.

The agents agreed that there have been no further mice caught in the traps since the hole in the wall was filled on May 31, 2010.

Analysis

Based on the testimony of both parties and the documentary evidence filed, I find that the Tenant gave the Landlord written notice on May 31, 2009; June 25, 2009; December 27, 2009; January 20, 2010; and March 27, 2010, that mice were entering the rental unit through a hole in the wall behind his dishwasher. Although I accept that the Landlord's management company took steps to have a pest control company set traps on a monthly basis after January, 2010, it is clear from the testimony of both parties that no steps were taken until May 31, 2010, by the Landlord to seal the hole identified by the Tenant to be where the mice were gaining access. Both parties agreed that there were no further mice sightings after the hole was sealed. Therefore, I find it is likely that the mice were gaining access to the rental unit through the hole in the wall behind the dishwasher.

I find that the Tenant is due compensation, however I find that the amount requested is excessive for the following reasons:

- There is no evidence that the Tenant made written request to the Landlord between June 25, 2009 and December 27, 2009, when the Tenant testified the mice were being sighted weekly. I would have expected the Tenant to be more persistent in his request for the Landlord to seal the hole if it was causing him much distress.
- The Tenant did not attempt to seal the hole in the wall himself. A party seeking compensation for damages under Sections 67 and 7 of the Act must show attempts the party made to mitigate the damages.

I award the Tenant an amount equivalent to 2% of his monthly rent, for the 12 month period it took the Landlord to seal the hole behind the dishwasher. ($\$1,300.00 \times 2\% \times 12 = \312.00).

The Tenant's application for an Order that the Landlord make repairs to the rental unit is dismissed, as the Landlord made the necessary repairs prior to the Hearing.

There was merit to the Tenant's application and therefore, the Tenant is entitled to recover the filing fee from the Landlord, in the amount of \$50.00.

Pursuant to the provisions of Section 72(2)(a) of the Act, the Tenant may deduct the amount of \$362.00 from future rent due to the Landlord.

Conclusion

The Tenant may deduct the amount of \$362.00 from future rent due to the Landlord.

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: June 30, 2010.
