



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNR, MNDC, MNSD, FF
(MNDC), MND, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement, for the return of a security deposit and to recover the filing fee for this proceeding. The Tenant amended her application on November 10, 2010 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. However at the beginning of the hearing, the parties confirmed that the notice was cancelled when the Tenant paid the rent owing within the 5 days granted under the Act and as a result, this part of the Tenant's application is dismissed without leave to reapply.

The Landlord applied for compensation for damage or loss under the Act or tenancy agreement and for damages to the rental unit as well as to recover the filing fee for this proceeding.

Issues(s) to be Decided

1. Is the Tenant entitled to compensation and if so, how much?
2. Is the Landlord entitled to compensation and if so, how much?
3. Is the Tenant entitled to the return of her security deposit?

Background and Evidence

This tenancy started on December 15, 2009. Rent is \$1,200.00 per month payable in advance on the 1st day of each month, however the Tenant received rent reductions for each month during the period, January to August 2010. The Tenant paid a security deposit of \$600.00 at the beginning of the tenancy.

The Tenant's Claim:

The Tenant claims that prior to entering into the tenancy agreement the Landlord advised her that the rental unit was newly renovated however she discovered at the beginning of the tenancy that this was not true and that there were many repairs required. The Tenant said there was a high level of humidity in the rental unit and she only discovered in March 2010 that it was due to water leaking through the patio under

the floor and a leak in the plumbing in the bathroom. The Tenant argued that the Landlord was aware of these problems prior to the tenancy but failed to disclose it to her. In support of this claim, the Tenant provided a written statement from a prior tenant of the rental unit who claimed that there was flooding and water damage during his tenancy and that he was “sure the Landlord was aware of this.”

The Tenant was given a rent reduction of \$450.00 in January and February 2010 to compensate her for doing cosmetic repairs such as painting and installing base boards. The Tenant also received a rent reduction of \$100.00 in March and April 2010 to compensate her for the cost of hydro to operate a dehumidifier. The Tenant’s rent for April was reduced by a further \$100.00 to compensate her for the loss of the use of her patio which had been pulled apart in mid-March 2010 to start repairs.

The Tenant said that in March 2010, the Landlord discovered that there was a damaged pipe in the wall of her bathroom that was leaking under the tub and into the garage area of the rental property below. A plumber removed some tiles from the shower area to repair the leak and roughly stuck the removed tiles back into place. The Tenant claimed that during this repair, she was advised by the plumber that there was black mould behind the wall. The Tenant said she brought this to the Landlord’s attention but he claimed there was no mould and refused to make any further repairs.

A friend of the Tenant’s was hired by the Landlord to make repairs to the patio area. The Tenant said that this repair took longer than anticipated in part because her friend needed 2 or 3 hot, sunny days to ensure the cement was dry and in part because it was more labour intensive than he had anticipated. Consequently, the Tenant said the patio repair could not be completed until the end of June or beginning of July, 2010. The Landlord also hired the Tenant’s friend to make repairs to the bathroom. The Tenant said this repair could not be started until the leak from the patio was repaired so it started in early August and was completed by the end of August. The Tenant provided copies of photographs which showed a black substance on the drywall behind the tiled area of the shower. The Tenant claimed that this was black mould. The Tenant also claimed that the Landlord refused to give her friend authorization to remove the tub to look for mould under it and as a result, she believed that there was still mould in the rental unit after the repairs were completed. The Tenant also claimed that the bathtub continued to leak after the repairs were made in August 2010 but she provided no evidence of that.

Consequently, the Tenant sought the return of all of her rent payments during the term of the tenancy. The Tenant argued that the rental unit was not fit for occupation due to the mould, humidity and unfinished repairs and said that she has not lived in the rental unit from May 11, 2010 to date.

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The Landlord claimed he was unaware of any flooding or water damage in the rental unit prior to the tenancy and said that the previous tenant never said anything to him about it. The Landlord said he hired the Tenant's friend to make repairs to both the patio and the bathroom in April 2010 as soon as he was aware of the leaks. The Landlord said he believed the repairs would be completed earlier than if he hired someone else because the Tenant's friend had free access to the rental unit. However, the Landlord claimed that he continually had to contact the Tenant to find out why the Tenant's friend was delaying in making the repairs. The Landlord said the Tenant's friend said it would only take 2 days to make repairs to the patio, however he did not finish it for almost 4 months. The Landlord denied that the bathroom repair could not be started until the patio repair was completed. The Landlord further denied telling the Tenant's friend that he could not remove the bathtub and claimed instead that the Tenant's friend made the repairs as he saw fit.

The Landlord denied that the black substance on the drywall in the bathroom (shown in the Tenant's photographs) was mould and said he was not sure what it was. The Landlord also argued that there was no evidence that there was mould under the bathtub in the rental unit. In any event, the Landlord argued that the Tenant's claim was unreasonable because he told her at the end of February 2010 that if she was having problems living in the suite, she could move into another suite in the rental property or consider moving out but she refused to do either. The Landlord said he did not hear any complaints from the Tenant after the bathroom was repaired in August 2010.

The Landlord's Claim:

The Landlord said the Tenant contacted him on one occasion to tell him he could pick up the rent but when he arrived, she would not give it to him and instead used the opportunity to try to get a rent reduction. As a result, the Landlord said he wasted 3 hours of travel time and needlessly incurred expenses for fuel. The Tenant claimed that she left a cheque for the Landlord in his mail slot in the rental property earlier that day but he got angry and left without picking it up.

The Landlord also said that the Tenant contacted an inspector at the municipal "property use" department and complained that there was mould and bed bugs in the rental property. As a result of this complaint, the Landlord said he had to attend the rental property with this official to demonstrate to him that there was no mould or bed bugs. Consequently, the Landlord said he spent time to travel to the rental property and deal with the official and needlessly incurred expenses for fuel. The Tenant argued that "evidence of mould repairs" was found in some suites by the official who attended the rental property and that one suite had mould around a window. The Landlord claimed that this was due to that tenant's failure to maintain sanitary standards.

The Landlord also sought to recover rent for August 2010. The Landlord admitted that he agreed to give the Tenant a rent reduction of \$250.00 for August but claimed that following the previous hearing on August 9, 2010 he changed his mind.

The Landlord said there were no bed bugs in the rental property prior to the Tenant moving in and that the Tenant moved in with an unauthorized dog which he argued could be the source of the alleged bugs. In any event, the Landlord argued there was no evidence of bedbugs in the rental property but if the Tenant was entitled to a rent reduction for an alleged infestation then she should bear the cost of approximately \$1,000.00 to get rid of it. The Tenant claimed that there would probably be no more bed bugs in the rental unit because she had thoroughly bleached it.

Analysis

The Tenant's Claim:

Section 38(1) of the Act says that a Landlord is not obligated to return a Tenant's security deposit until 15 days following the end of the tenancy or the date the Tenant gives her forwarding address in writing (whichever is later). As the Tenant claimed that the tenancy was ending on December 1, 2010, I find that her claim for the return of her security deposit is premature and therefore is dismissed with leave to reapply.

Section 32 of the Act says (in part) that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and that makes it suitable for occupation by a tenant.

The Tenant has the burden of proof and must show on a balance of probabilities that the Landlord knew there were significant leaks in the rental unit but failed to disclose them to the Tenant. Alternatively, the Tenant must show that the Landlord failed to make required repairs which rendered the unit unfit for occupation.

The Tenant relied on a written statement of a previous tenant of the rental unit who said he was aware of leaks in the rental unit and therefore believed the Landlord probably knew about it. The Tenant also claimed in her oral evidence that this tenant advised the Landlord early in his tenancy about a leak which the Landlord denied. With all due respect, the Tenant's witness statement does not state that he advised the Landlord that there was a leak and I find that the Tenant's oral evidence in this regard is hearsay and unreliable and therefore I give it little weight. Consequently, I find that there is

insufficient evidence to conclude that the Landlord was aware of leaks in the rental unit prior to the tenancy.

I find that the Tenant is not entitled to recover her rent payments for the period, December 15, 2009 to February, 2010. Although the Tenant claimed that there were issues with high humidity in the rental unit during this period of time, I find that she did not bring any concerns about it to the Landlord's attention until sometime in February 2010 and the Landlord provided her with a dehumidifier the following day. In her written submissions, the Tenant said it was not until March 4, 2010, she contacted the Landlord to advise him that the dehumidifier was not solving the humidity issue because there were also "leakage problems." Consequently, I find that the Landlord cannot be liable for compensating the Tenant for failing to make repairs which he did not know were needed.

The Tenant admitted that the Landlord offered her another suite in the rental property as soon as she brought the leaks in the rental unit to his attention, however, she claimed that she turned the Landlord down because she wanted the rental unit for the large patio which the other unit did not have. The Tenant also claimed that the Landlord promised to do the repairs so rather than incur more moving expenses she decided to stay. The Tenant further claimed that she could not live in the rental unit from May 11, 2010 to the end of November 2010 because of the condition of the rental unit.

The Landlord said that he agreed to hire the Tenant's friend at her request to do the repairs to the patio and the bathroom. The Landlord said that he raised his concerns to the Tenant a number of times in early June 2010 when he discovered that the patio still had not been repaired. The Landlord also said that the Tenant's friend could have started repairs to the bathroom as early as April 2010 however he did not start them until August 2010. The Tenant argued that in previous proceedings held on August 9, 2010, the Landlord denied that there was any mould in the bathroom or that any repairs were necessary. Consequently, the Tenant argued that it was only after this hearing that the Landlord agreed to repairs being done to the bathroom and at that time mould behind the shower tiles was apparent. The Tenant also argued that the Landlord refused to give his consent to remove the bathtub to ensure no mould existed there.

Section 7(2) of the Act says that a party who suffers damages must do whatever is reasonable to minimize their losses. In this regard, I find that the Tenant's decision to stay in the rental unit despite her concerns about water leaks and mould in the bathroom was unreasonable. The Tenant had an opportunity to move to another unit in the rental property as early as March 2010 but she refused to do so. I find that it made no sense for the Tenant to continue to rent the rental unit but not occupy it for 7 months and then bring a claim for compensation for the return of all of her rent payments. Even if the Tenant had had to incur moving expenses, I find that the expenses to do so

would have been *significantly* less than the claim the Tenant now brings for the return of all of her rent payments (\$7,400.00) for the same period. Consequently, I find that the Tenant failed to mitigate her damages and is not entitled to recover her rent payments from March to November 2010.

The Tenant also argued that she decided to stay in the rental unit because the Landlord promised to do repairs. The Tenant admitted that the Landlord authorized the repairs to the patio to start immediately however she knew there would be a delay in the repair of the leak from the patio because her friend told her he could not get to it until there were 2 or 3 consecutive sunny, hot days. Consequently, I find that any delay in repairing the patio was not caused by the Landlord and that the Tenant knew there could be a significant delay in repairing it.

With respect to the repairs to the bathroom, I find that the Tenant's evidence on this point is inconsistent. On the one hand the Tenant claimed that the Landlord expressed no interest in doing repairs to the bathroom as early as March 2010 when she expressed her concern to him about mould. On the other hand, the Tenant claimed that repairs to the bathroom were discussed but could not be started in April because the leak in the patio had to be repaired first. Consequently, I find that the Tenant is not entitled to the return of rent payment from March 2010 to November 2010 because there is insufficient evidence that the Landlord failed to make repairs to the bathroom in a reasonable period of time.

The Tenant also claimed that the rental unit was uninhabitable during the tenancy due to mould and moisture, however I find that there is little evidence of this. The Tenant provided a copy of a letter from her physician dated August 31, 2010 which states that the Tenant suffers from asthma and allergies which is aggravated by a damp, mouldy environment. The letter goes on to say that the Tenant "has been coughing for weeks." However, at the hearing, the Tenant claimed that she had not occupied the rental unit since May 11, 2010 and therefore I conclude that any cough presented by the Tenant on August 31, 2010 was unrelated to the condition of the rental unit. Although the Tenant claimed that the photographs showed that there was mould in the bathroom, the Tenant provided no evidence that this rendered the rental unit uninhabitable. Instead, the Tenant's evidence was that despite finding mould in March 2010 and having concerns for her health, she turned down the Landlord's offer to stay in another suite in the rental property and continued to live in the rental unit for a further 2 months.

For all of these reasons, I find that the Tenant has not made out a claim for compensation and it is dismissed without leave to reapply.

The Landlord's Claim:

Section 45(1) of the Act states that a Tenant of a month-to-month tenancy must give the Landlord one clear month's notice in writing that they are ending the tenancy. If a Tenant fails to do so, they may have to compensate a Landlord for a loss of rental income he incurs as a result. However, s. 7(2) of the Act says that a Party who suffers damages must take reasonable steps to try to minimize his losses. This means that a Landlord must take reasonable steps to re-rent the rental unit as soon as possible. As it is possible that the Landlord may still be able to re-rent the rental unit for all or part of December 2010, I find that his claim for a loss of rental income for December is premature and it is dismissed with leave to reapply.

In his application, the Landlord also sought to recover \$3,000.00 from the Tenant due to alleged deficiencies in the repairs done to the bathroom in the rental unit (ie. her friend's failure to repair mould alleged by the Tenant to exist under the bathtub). However, the Landlord admitted that his agreement with respect to the bathroom repairs was with the Tenant's friend who is not named as a Party to these proceedings. Consequently, this part of the Landlord's application is dismissed without leave to reapply.

The Landlord sought to recover unpaid rent of \$250.00 for August 2010. The Landlord admitted that he agreed to give the Tenant a reduction of this amount to compensate her until the repairs were done on the bathroom, but said that he changed his mind about the rent reduction following a hearing with the Tenant on August 9, 2010. I find, however that once the Landlord agreed to the rent reduction, it was not open for him to change his mind and revoke his offer. Furthermore, I find that the Tenant was without the bathroom for some time in August 2010 while repairs were being made and therefore I also find that a rent reduction would have been warranted in any event. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

The Landlord also sought to recover \$1,000.00 for exterminator expenses. However, as the Landlord admitted that there probably was no need to incur this expense since there was no evidence of a bed bug infestation, I find that this part of the Landlord's claim must be dismissed without leave to reapply.

Finally, the Landlord sought to recover compensation for his time and travel expenses to attend the rental property on two occasions. The Landlord claimed that these trips were made caused by the Tenant and proved to be unnecessary. The Tenant claimed that the Landlord failed to pick up her rent payment on the first trip because he stormed out and forgot to collect it. The Tenant also claimed that the second trip was only necessary because the municipal official needed the Landlord to show him around the rental property and that evidence of mould was discovered at that time. I find that the Landlord is not entitled to recover compensation for these trips because they are part of



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his duties as a Landlord for which he already receives compensation. Consequently, this part of the Landlord's claim is dismissed without leave to reapply.

Conclusion

The Tenant's application for compensation is dismissed without leave to reapply. The Tenant's application for the return of a security deposit is dismissed with leave to reapply. The Landlord's application for a loss of rental income is dismissed with leave to reapply. The Landlord's application for compensation is dismissed 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: December 01, 2010.

Dispute Resolution Officer