



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, MNR, OPR, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlord. Both files were heard together.

The tenant's application is a request for a monetary order for \$1850.00.

The landlord's application is a request for an Order of Possession, a request for a monetary order for \$500.00, and a request that the tenants bear the \$50.00 cost of the filing fee that he paid for his application for dispute resolution. The landlord is also request an order allowing him to keep the full \$500.00 security deposit towards this claim.

Background and Evidence

The tenants testified that:

- They have had to endure a leaking roof in this rental unit since January of 2010.
- They made numerous request of the landlord, both by phone and in writing, to repair the problem; however the landlord has failed to do so.
- The constant leaking has caused a mould problem in the rental unit and they have had to endure constantly damp carpets and walls, and fogged up windows.
- After numerous complaints the landlord finally sent a roofer to look at the problem in November of 2010.
- The roofer said that the whole roof should be replaced but it was not replaced and instead it was patched.
- The patch did not resolve the problem and the roof continued to leak.
- They attempted to get the landlord to come back and have the problem resolved however the landlord just kept telling them that it was fixed and he would not do anything further.
- The landlord also refused to replace the soggy drywall and get rid of the mould.
- Therefore since they did not feel safe living in a house that was constantly leaking and growing mould they gave the landlord notice to vacate, and moved out of the rental unit on December 11, 2010.

The tenants are therefore requesting the return of all the rent they paid for the months of November 2010 and December 2010, \$300.00 for moving costs, plus \$50.00 for the filing fee they paid for their application for dispute resolution.

The landlord testified that:

- The tenants called him around November 10, 2010 and told him about the leak and therefore on November 15, 2010 he had a roofer go and repair the leak.
- The roof has not leaked since that time, and is not leaking now.
- The floors and walls in the rental unit are dry, and there is no mould growing.

The landlord therefore does not believe that he should have to return any rent, or pay for moving costs, and believes that the tenants should pay the remaining \$500.00 of the December at 2010 rent which they failed to pay.

Analysis

It is my finding that the tenants have shown that the landlord did not resolve the problem of the leaking roof in this rental unit.

The tenants have provided photo evidence that shows that there is still substantial leaking into the rental unit and I accept the tenant's testimony that these photos were taken well after the landlord had the roofer come to do a repair.

It is also obvious from the photo evidence that there are substantial mould issues in this rental unit, and I do not accept the landlords claim that there is no mould.

Section 32 of the Residential Tenancy Act states:

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

It is my decision that the landlord has failed to maintain the rental unit and as a result there is a possible health risk from the mould, and the unit is not suitable for occupation due to the ongoing leak.

I therefore allow the tenants claim for return of all rent paid for both the months of November 2010, and December 2010, for a total of \$1500.00.

I further order that the landlord bear the \$50.00 cost of the filing fee that the tenants paid for their application for dispute resolution.

I dismissed the tenants claim for moving costs however, because the tenants have supplied no evidence of costs incurred to move from the rental unit.

The landlord had requested an Order of Possession however he now has possession of the rental unit and therefore no such order is required.

The landlord had also requested \$500.00 for December 2010 rent, and had requested an order allowing him to keep the full \$500.00 security deposit towards the claim; however it is my decision that the tenants are not liable for any further rent and therefore I have issued an order for the landlord to return the full security deposit to the tenants.

Conclusion

Tenants application

I have allowed \$1550.00 of the tenants claim, and the remainder is dismissed without leave to reapply.

Landlords application

The landlord's application is dismissed in full without leave to reapply, and the full security deposit of \$500.00 must be returned to the tenants.

In satisfaction of the above decisions I have issued an order that the landlord pay \$1550.00 + \$500.00 = \$2050.00 to the tenants.

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: January 20, 2011.

Residential Tenancy Branch