



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, RP, RR, ERP, OLC, FF

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution seeking a monetary order; an order to have the Landlord make repairs, to make emergency repairs, to comply with the *Residential Tenancy Act* (the "Act"), an order to reduce rent for repairs and to recover the filing fee.

At the outset of the hearing the female Tenant acknowledged that the repairs and the emergency repairs had been completed, but the final repairs were not fully completed until January 27, 2011. As a result, I amend the Tenants' application to exclude the matters related to repairs and emergency repairs and deal only with the matter of compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The Tenants, the Landlord's Agent and a witness appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Issue(s) to be Decided

The issue to be decided is whether the Tenants are entitled to a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to Sections 32, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began on June 1, 2002, on a month to month basis, monthly rent is currently \$1,336.44, with a security deposit of \$625.00 paid on May 8, 2002.

The female Tenant testified that she first reported a black mould issue to the Landlord on October 10, 2010, in a voice mail to the Landlord's Agent; however, according to the Tenant's testimony, the Agent did not attend the rental unit until November 24, 2010, after sending an email to the Landlord.

The Tenant testified that the black mould was a health hazard and the Tenants are entitled to a 30% rent reduction in the amount of \$1,200.00 for the now three months the problem was not corrected.

The Tenant also testified that the Tenants had several other issues concerning a broken lock, ceiling staining and peeling paint in the bathroom, and damaged blinds and that the problems were not sorted out until the Landlord received the notice of dispute resolution.

The Landlord's witness testified that he attended to the mould complaint at the Landlord's request; however the witness testified that his inspection was delayed as the Tenants did not return his phone call.

The witness testified that there was no mould in the bedroom closet, as reported by the Tenants, but rather a dust and debris problem, created by poor circulation. The witness testified that the air circulation in the problem area was created by the large number of shoe boxes placed against the wall placed by the Tenants.

The witness testified that although there was no moisture, he treated the area and painted it.

The Landlord's Agent denied that he was contacted on October 10, 2010, but rather on November 10, 2010, as indicated on the email evidence submitted. The Landlord's Agent testified that he asked the Tenants to put the mould complaint into writing so that he could determine if this was a strata issue, and did not hear back from the Tenants until after several follow-up requests by him, which occurred on November 22, 2010.

The Landlord's Agent testified and supplied evidence that he attempted to arrange an inspection on November 23, 2010, but was unsuccessful in so doing until November 24, 2010.

After attending the rental unit and determining that there was no moisture in the problem area, the Landlord's Agent determined that the spot was not mould, but rather an air circulation problem.

The Landlord's Agent testified that the other areas pointed out by the Tenants in the bathroom, which allegedly had peeling paint, was caused by mildew and the non-use of the bathroom fan by the Tenants.

The Landlord's Agents said that any delay, if any, was due to the Tenants not returning the painter's phone calls. Additionally, the Landlord's Agent testified and supplied evidence that he retained the services of a restoration company to test for the mould, with none found.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In order to be successful in a claim for compensation for damage or loss the party making the claim must provide sufficient evidence to prove the following points:

1. That a loss or damage exists;
2. That that loss or damage results from the other party's violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. The steps taken by the party making the claim to mitigate their loss.

Section 32 of the *Act* requires a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find whether or not there was mould problem in the master bedroom closet, the issue was not identified to the Landlord until November 10, 2010, as supported by the evidence. I find the evidence supports the testimony of the Landlord's Agent that the Tenants did not put the complaint in writing until November 22, 2010, after several requests by the Landlord and that the Landlord attended the rental unit on November 23, 2010, after a one day delay by the Tenants.

Based on the testimony of both parties and the evidence of the emails and receipts of the Landlord, I find the Landlord has taken reasonable and timely steps to complete the required repairs and is therefore not in breach of Section 32 of the *Act*, regulation or tenancy agreement.

As I have found that any damage or loss which may have existed is not result from the Landlord's violation of the *Act*, regulation or tenancy agreement, I find the Tenants have failed to provide sufficient evidence to support their claim for compensation.

Conclusion

For the reasons noted above, I dismiss the Tenants' application in its entirety.

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: February 09, 2011.

Residential Tenancy Branch