



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenant seeking a monetary order as compensation. Both parties participated in the conference call hearing. This matter was first scheduled for teleconference hearing on March 25, 2011. After some lengthy discussions both parties requested and required this matter to be adjourned so that they could exchange more relevant documentary evidence. The adjournment was granted and the hearing recommenced on April 19, 2011. Both parties attended by teleconference today to reconvene the dispute resolution hearing.

Issues to be Decided

Is the tenant entitled to a monetary order under the Act, regulation or tenancy agreement?

Background and Evidence

Both parties gave affirmed testimony.

The tenancy began on or about July 2005. Rent in the amount of \$743.00 is payable in advance on the first day of each month. The tenant seeks compensation for having to live with mould in their rental unit since 2007. The tenant gave evidence that it was an ongoing problem in the bathroom that resulted in the tenants not being able to use their shower at various times. The landlord does not dispute that there was an issue with a leaking kitchen sink on the upper floor that was dripping down into a lower floor

washroom and causing water damage to the drywall and bathtub caulking from deteriorating. The landlord does dispute that there was mould. The tenant was originally seeking all of the rent she had paid over the term of her tenancy as compensation. That amount was approximately \$35,000.00. She later changed the amount she was seeking to \$25,000.00 when she was informed of the limitations under the Act. I directed the tenant on numerous times to offer how in fact she came to that monetary amount. The tenant testified that "she deserved that much because she felt she deserved it". She offered no other formula or breakdown of how she came to that amount. When this hearing reconvened the tenant offered to settle for \$10,155.63 a number she came to by asking for a percentage of total rent paid over the length of the tenancy. The landlord denied the issue was an ongoing problem and felt that the tenant was not unreasonably inconvenienced. The landlord testified that the tenant would limit or restrict access to have the repairs done which caused undue delay. The landlord also offered alternative living arrangements which the tenants chose not to accept.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenant must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant would offer one version of an event, and when challenged would alter and offer another version. I found the tenant's testimony to be inconsistent and unreliable. In the tenant's own testimony she advised that she had not informed the landlord of the mould issue until January 2011. This was contradictory to what she had first offered. The tenant was unable to satisfy me that they were entitled to compensation.

Conclusion

The tenant's application is dismissed.

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: March 25, 2011.

Residential Tenancy Branch