



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of this application.

The landlord and the tenant both attended the conference call hearing, gave affirmed testimony, and provided evidence in advance of the hearing. The landlord also called 2 witnesses who gave affirmed testimony. The parties were also given the opportunity to cross examine each other and the witnesses on their testimony. All evidence, and the testimony provided by the parties and the landlord's first witness has been reviewed and is considered in this Decision. The second witness called by the landlord testified, however the witness was ordered to leave the room prior to testifying but he did not remain outside the room until called. I therefore find it difficult to accept his testimony after he heard the testimony of the landlord and the landlord's first witness. His evidence is therefore not considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This tenancy began as a fixed term tenancy on December 15, 2007, which was renewed from time-to-time and ended on October 31, 2010. Rent in the amount of \$575.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. On December 15, 2007 the landlord collected a security deposit from the tenant in the amount of \$287.50 which was returned in full to the tenant after the tenancy ended.

The tenant testified that the rental unit is in a complex with 7 rental units. In March, 2010 the tenant noticed mould on the wall at the head of his bed which was on the north wall of the rental unit. He washed the wall, but then noticed that 2 backpacks in the closet also had spots of mould. Then he discovered mould on his pillow. He moved the bed and found a dark stain on the floor. He called the landlord in March, 2010 and the landlord was not concerned and told the tenant to wipe it off.

The tenant further testified that he got a lung infection in January, 2010 prior to finding the mould. He works in a facility with elderly people and thought perhaps he caught something at work. He sought medical attention, and his doctor prescribed antibiotics.

The tenant also testified that he never asked the landlord to do anything after he told the tenant to wipe it off. He stated that he told the landlord when he moved in that he wanted to put plastic film on the windows because air came right through. The kitchen window had space between the glass and the frame, but the landlord told him not to put up the film because it may damage the paint. The tenant instead put wads of paper in the spaces. For the 2nd winter of the tenancy the tenant asked again if he could put up a film on the windows, and the landlord then agreed. The tenant bought the film and the landlord reimbursed him for the cost.

After finding the mould, the tenant was not able to use the bedroom. He stated that he moved his bed into the living room in May, 2010.

The tenant provided photographs of the inside and the outside of the building to support his evidence, as well as medical print-outs confirming visits to his doctors. He stated that the photographs were taken in October, 2010 prior to moving out. The photographs of the outside of the building show black marks on the walls, window frames and ledges. The tenant stated that the photographs also show a lack of maintenance by the landlord with the black marks and that the support poles don't meet the concrete or wooden supports on the ground. The photographs of the inside of the rental unit show mould in several areas as well as peeling and bubbling paint on the walls.

The landlord testified that after receiving the photographs of the tenant's evidence package, he enlarged one of the photos which is a picture of the outside of the bedroom window. He stated that he feels it's clear that the bed was still in the bedroom which is contrary to the tenant's evidence.

The landlord further testified that the photographs of the outside of the building do not show mould, but the black marks are dirt and dust that has settled on the outside of the building.

During cross examination, the landlord was asked if the lease was amended to expire in September after the tenant had complained about the mould, to which the landlord responded that he doesn't remember.

The landlord's first witness was a retired doctor who provided his credentials as well as his opinion in writing. The doctor testified that he was in the rental unit within the last 6 weeks and observed the mould inside. He stated that in his learned opinion, the mould was caused by internal condensation and lack of ventilation. He stated that he could tell that by the placement of the mould in the kitchen, bathroom, bedroom and living room. He further testified that he removed some of it with his hand in the bedroom and off the window frame. He stated that if it was external mould it wouldn't wipe off so easily.

Analysis

I am not satisfied in the evidence before me that all of the black marks on the outside of the building are dirt or dust. I am satisfied that the black marks on the inside of the rental unit are consistent with mould. I accept the evidence of the learned doctor that if the mould is easily wiped off, it cannot be mould that has permeated from the outside to the inside of the rental unit. However, not all of the mould was wiped off by the landlord or the landlord's witness, but select locations within the rental unit.

The landlord also attempted to convince me that the photograph of the outside of the bedroom window shows a bed in that room, and the tenant disputed that evidence stating that it was a curtain. I have viewed the photograph and I do not agree with the landlord that it is conclusively a bed. I accept the evidence of the tenant that he moved the bed to the living room.

The doctor's evidence was that the mould was caused by internal condensation and lack of ventilation. The *Residential Tenancy Act* states that a landlord must provide and maintain a rental unit in a condition that makes it suitable for occupation by a tenant. That, in my opinion, includes proper ventilation. The tenant testified that he put up a film to keep out the cold in the winter months due to spaces between the glass and the frame. Therefore, I find that the landlord had an obligation to either provide better ventilation or windows that fit. However, I do not have an application before me for an order that the landlord make repairs to the unit, site or property, and the tenant has vacated the rental unit.

The tenant's application is for damages as a result of the growing mould inside the rental unit and has provided sufficient evidence to prove that mould was in fact growing within and perhaps outside the unit. However, in order to be successful in a claim for damages, the onus is on the claiming party to prove the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the opposing party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. The efforts made by the claiming party to reduce, or mitigate such damage or loss suffered.

In this case, I am satisfied in the evidence before me that the tenant had taken steps to mitigate the damage by moving his bed into the living room. I am also satisfied in the circumstances that it was the landlord's responsibility to address the concerns of the tenant by doing more than telling the tenant to wash the walls. However, I have no evidence before me that the lung infection was a result of the mould. Not all moulds are toxic. It is possible that the lung infection was caused by another source, and there is no evidence that the mould is a type of mould that could cause such an illness. Therefore, I find that the tenant has failed to satisfy element 2 in the test for damages and his claim cannot succeed.

Conclusion

For the reasons set out above, the tenant's application is hereby 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: May 12, 2011.

Residential Tenancy Branch