



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and both landlords.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agreed the tenancy began in January 2009 for two consecutive fixed term tenancies for a monthly rent, at the end of the tenancy, of \$1,200.00 plus \$100.00 utilities due on the 1st of each month with a security deposit of \$625.00 paid. The tenancy ended on or before September 30, 2010. The parties confirmed the security deposit was returned to the tenant.

The tenant testified that he had used a portion of the attic in the rental unit for storage and that the access was by way of a door and ladder that he left open quite often. He states the landlord's later found out that there was asbestos in the insulation that was in the attic and as a result he has now been exposed and may potentially develop assorted health problems in the future.

The tenant asserts the landlord was negligent in failing to have a house inspection completed when they purchased the property and as a result the landlord should compensate the tenant for not provide a safe and healthy unit to reside in.

The landlords confirm, by way of documentary evidence, that the previous owner did not identify any asbestos insulation in the property and that they had had the insulation tested once the suspicion was raised. They confirm that upon testing the results show there are traces of Actinolite in the low range (between 1 and 10%).

The landlord asserts the tenant had no right to use the attic as it wasn't included in the tenancy agreement and as he had requested to use the crawl space under the rental unit for storage that he should have done the same when wanting to use the attic space.

The tenant testified that he has had a baseline x-ray taken and that it may take as much as 10 years to develop any exacerbated health problems. The tenant confirmed that he cannot provide any medical documentation confirming exposure, but by virtue of dust being seen in the air it is likely to have had some asbestos particles in it and he has therefore been exposed.

The tenant stated that he determined the value of the loss to be at 15% of the value of the rent he has paid over the length of the tenancy and that he has heard of other tenants receiving even more for similar cases.

Analysis

As I advised the parties at the start of the hearing, to be successful in an application to claim compensation for loss or damages the burden is on the Applicant to provide sufficient evidence to establish the following 4 points:

1. That a loss or damage exists;
2. That the loss or damage results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. The steps taken, if any, to mitigate the damage or loss.

In relation to the assertions of both parties regarding access to the attic, I accept the tenant's position that the tenancy agreement did not specify that he could *not* use the attic space within his own rental unit and that by virtue of the crawl space being accessed from the common area of the property the right to access to each of the two cannot be considered the same.

While I accept the landlord has confirmed there is asbestos in the attic insulation; and I accept the tenant's premise that he was not restricted in using the attic, the tenant has failed to provide any evidence, regardless of its availability, that confirms that he has suffered any actual damage or loss.

While the tenant testified that he has had a baseline x-ray completed for future comparisons, he has provided no medical documentation confirming that his physician has taken these steps or has any concerns regarding the tenant's possible exposure.

Even if I were to find the tenant had suffered a loss or damages, the tenant has provided no evidence to suggest the landlord has breached the *Act*, regulation or tenancy agreement. For example, the tenant has failed to show how failing to complete a house inspection when the landlord purchased the property meant the landlord failed to meet any obligations under the *Act*.

Conclusion

For the reasons noted above, I dismiss the tenant's 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: September 12, 2011.

Residential Tenancy Branch