



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to call witnesses, to ask relevant questions, and to make relevant submissions to me.

The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

The issue to be decided is whether the Tenant is entitled to compensation because there was a "musty" smell in the master bedroom of the rental unit and in a stairwell that is adjacent to the rental unit.

Background and Evidence

The Landlord and the Tenant agree that they entered into a fixed term tenancy that began on March 01, 2011; that the fixed term of the tenancy was to end on February 28, 2012; that the rental unit was inspected at the start of the tenancy, at which time neither party noted a smell in the rental unit; that sometime after the tenancy began and prior to March 15, 2011 the Landlord installed weather stripping on the window in the bedroom; that on March 15, 2011 the Tenant advised the Landlord, in writing, that there was a smell in the master bedroom of the rental unit; that representatives of the Landlord inspected the rental unit on March 18, 2011; and that the Tenant vacated the rental unit on June 12, 2011.

The witness who is the property manager of the residential complex stated that he inspected the rental unit on March 18, 2011; that he did not notice a smell in the rental unit; that the Tenant had advised him that she had kept the doors and windows to the master bedroom closed in an attempt to amplify the smell in that room; that he viewed

the outside of the building and noticed some cosmetic damage; that he did not notice any signs of water egress on the outside of the residential complex or on the inside of the rental unit; that he contacted the Tenant the following week and advised her no action would be taken as no signs of a problem had been detected; that as a sign of good will he offered to allow the Tenant to relocate to another rental unit in the residential complex; that she declined the offer to relocate; and that he did not personally receive any further notice of her concerns until the Tenant submitted her notice to end the tenancy.

The female Tenant stated that she did not notice to smell when she moved in which she believes is because the rental unit had been aired out prior to the inspection. She stated that the smell in the unit appears to be worse during inclement weather. The female Tenant acknowledged that the property manager and building manager advised her that they could not smell anything in the rental unit when they inspected it on March 18, 2011. She stated that she believes they could not smell the odour because she had the window and door open prior to the inspection. She stated that she was advised no repairs would be completed until the summer but that the outside of the building was going to be repaired in the following summer.

The female Tenant initially stated that the Property Manager did not offer to relocate her to another rental unit. She subsequently stated that he did tell her he had other units vacant in the complex but she told him that she did not wish to move because she did not want to be disturbed by building repairs. When asked why she would tell the Property Manager that she did not wish to move within the complex if she had not been offered that opportunity, she acknowledged that she understood she had the option of moving within the complex.

The male witness for the Landlord who is identified as the Building Manager stated that he was the building manager until April 26, 2011; that he attended at the rental unit during this tenancy at least two times; that he did not notice a smell in the rental unit on either occasion; that he never found any evidence of a water leak; that he did not notice moss growing on the exterior of the residential complex near the rental unit; that he did tell the Tenant that there were plans to fix the exterior of the building but that he never gave her a date for those repairs, as he did not know the date; that the male Tenant told him that he could not smell anything in the room; that he received no complaints of an odour in the rental unit from the previous tenant; and that the carpets in the stairwell adjacent to this rental unit were cleaned during this tenancy as a part of regular maintenance and not because there was a smell in the stairwell.

The male Tenant stated that he initially did not notice the smell in the master bedroom and that at some point he advised the male Building Manager that he did not smell anything in the bedroom. He cannot recall when he told the Building Manager he could not notice the smell, although he believes it was in close proximity to the time of the inspection on March 18, 2011. The female Tenant stated that she believes the male Tenant did not initially smell the odour because he slept during the day, with the window open.

The female witness for the Landlord who is identified as the Building Manager stated that she was the building manager since April 26, 2011; that she was in the rental unit on at least five occasions since becoming the manager, albeit never on a rainy day; that she has never noticed a smell in the rental unit; that he never found any evidence of mould or a water leak; that new tenants moved into the rental unit on July 01, 2011; and that she has received no complaints of an odour from the new occupant.

The female Tenant stated that the Tenant did not attempt to resolve her concerns by filing an Application for Dispute Resolution prior to prematurely ending the fixed term tenancy.

The Witness for the Tenant stated that she is the daughter of the Tenants; that after her parents lived in the unit for approximately one month she noticed a smell in the rental unit and an adjacent stairwell; that her eldest son developed a cough after staying overnight at the rental unit; and that she noticed her mother started coughing after living in the rental unit for a period of time.

The female Tenant stated that her health began to deteriorate shortly after she moved into the rental unit and that it improved after she moved out of the rental unit. The Tenant submitted a letter from her acupuncturist, in which the author stated that the female Tenant advised her that she experienced increased sinus congestion and pain after moving into the rental unit.

The Tenant submitted several photographs of the exterior of the rental unit, which the Tenant contends demonstrates there is water leaking into the unit.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant has submitted insufficient evidence that there was a musty smell in the rental unit or the stairwell adjacent to the rental unit.

In determining that there is insufficient evidence to conclude that there was a musty smell in the rental unit, I placed little weight on the testimony of the Tenant and the witnesses for each party. As the testimony of the witnesses for the Landlord contradicted the testimony of the Tenant and the witness for the Tenant in regards to a smell in the rental unit, I find that I cannot rely on their testimony to make a determination in the matter. When the oral testimony of the parties at a hearing is contradictory or inconclusive, the onus of proving the claim with corroborating evidence

rests with the person making a claim for compensation.

In determining that there is insufficient evidence to conclude that there was a musty smell in the rental unit, I was guided, in part, by section 21 of the *Residential Tenancy Regulations*, which stipulates that a condition inspection report is evidence of the state of repair and condition of the rental unit on the date of the inspection, unless the landlord or the tenant has a preponderance of evidence to the contrary. As there was no mention of a smell in the rental unit on the condition inspection report that was completed at the start of the tenancy, this section suggests that the tenant must present strong evidence to corroborate her testimony that the smell existed at the start of the tenancy.

I note that the Tenant submitted no expert evidence from an independent source, such as a health inspector or a construction specialist, that would cause me to conclude that this rental unit does not comply with health, safety, and housing standards or that the rental unit was not suitable for occupation.

I note that the Tenant did not file an Application for Dispute Resolution seeking a resolution to her concern, such as an Order to repair the unit or to have the unit inspected by a professional, prior to prematurely ending the tenancy.

I find that the photographs submitted in evidence do not cause me to conclude that there was a water egress or mould problem in this rental unit. Although there is clearly some discoloration around the window and walls on the exterior of this residential complex, I do not have the technical expertise to conclude that the discoloration is proof of a problem with moisture. In my view the condition of the exterior of this residential complex is not inconsistent with the condition of the exterior of many buildings of that era.

In determining this matter I placed little weight on the female Tenant's testimony that her health deteriorated shortly after moving into the rental unit and that it improved after she moved out of the rental unit. While I accept that she experienced medical issues during this tenancy, I find that there is insufficient evidence to conclude that the rental unit contributed to her medical issues. I note that there is no evidence from a medical practitioner that corroborates the Tenant's belief that her medical conditions were caused or exacerbated by the rental unit. I specifically note that the acupuncturist declared that the Tenant began her "course of treatment" in February of 2011 and that this tenancy did not begin until March of 2011, which causes me to believe that the Tenant had a pre-existing medical condition.

In determining this matter I was influenced, to some degree, by the testimony of the male Building Manager, who stated that the previous occupant of this rental unit did not report any problems with the rental unit and by the testimony of the female Building Manager, who stated that the current occupant of this rental unit has not reported any problems with the rental unit. This causes me to conclude that if a smell does exist in the rental unit, it is not significant enough to suggest that the rental unit does not comply

with health, safety, and housing standards or that the rental unit was not suitable for occupation.

Conclusion

I find that the Tenant has failed to establish that the Landlord has failed to comply with the *Act* during this tenancy and that the Landlord's failure to comply with the *Act* has resulted in a loss for the Tenant. I specifically find that the Tenant has failed to establish that the Landlord has not provided a rental unit that complies with health, safety, and housing standards or a rental unit that is suitable for occupation, as is required by section 32 of the *Act*.

As the Tenant has failed to establish that the Landlord has failed to comply with the *Act* during this tenancy and that the Landlord's failure to comply with the *Act* has resulted in a loss for the Tenant, I dismiss the Tenant's application for compensation for any costs arising from the tenancy or the Tenant's decision to end the tenancy.

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: October 12, 2011.

Residential Tenancy Branch