



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, PSF, OLC, MNDC, DRI

Introduction

This hearing dealt with the tenants' application for Orders requiring the landlord to make emergency repairs, provide for services or facilities required by law, to comply with the Residential Tenancy Act (the "Act"), and monetary compensation for damage or loss under the Act, regulations or tenancy agreement. The tenants also filed to dispute a rent increase.

The landlord did not appear at the hearing. The tenants testified that they served the Hearing Package upon the landlord via registered mail on November 7, 2011, to the address at which the landlord carries on business. The tenants provided the tracking number for the registered mail.

Having been satisfied the tenants served the landlord in a manner that complies with section 89 of the Residential Tenancy Act (the "Act"), I proceeded to hear from the tenants without the landlord present.

Issue(s) to be Decided

1. Have the tenants established that Orders to the landlord are required for emergency repairs, to provide for services required by law and to comply with the Act?
2. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?
3. Are the tenants entitled to an order cancelling the additional rent increase?

Background and Evidence

Although no tenancy agreement was entered into evidence, the tenants testified that the tenancy started on February 1, 2011, and ended in the first week of November 2011.

The tenants stated that monthly rent was \$1,000.00 and that they paid a security deposit of \$500.00 at the beginning of the tenancy.

The tenants' evidence was five photographs.

The tenants stated that the landlord served them a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") and the day after receiving the Notice, the landlord changed the locks. The tenants did not submit a copy of the Notice.

The tenants submitted that during the tenancy, the landlord deprived them of heat and necessary lighting, as he controlled both from his upper unit. The tenants failed to provide evidence that this matter was addressed with the landlord.

The tenants submitted that during the tenancy, the landlord would not remediate the mould in the rental unit, which caused the tenants to be sick for periods of time during the tenancy.

In explaining the amount of \$1,000.00 listed in their monetary claim, the tenants submitted that this was the amount listed on the 10 Day Notice to End Tenancy for Unpaid Rent.

The tenants acknowledged that they have moved out and did not want to return. I therefore did not consider the tenants' claim to have the landlord provide for services required under law, to comply with the Act or make emergency repairs.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss, in this case the tenants, has the burden of proof to establish their claim on the civil standard, as follows:

First proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the circumstances before me the tenants failed to provide any documentary evidence, other than some photographs of the rental unit. I find the photographs depict that the rental unit was unclean and possibly required some minor repairs, which I find did not affect the tenancy. The tenants failed to provide evidence that the landlord was responsible for cleaning the rental unit or making repairs, such as broken plastic around the shower handle.

The tenants were not clear in their submission as to why they were claiming \$1,000.00, stating only that it was the amount the landlord said they owed for November 1, 2011.

The tenants did not apply for compensation for alleged lack of services or the alleged failure by the landlord to comply with the Act. I find the unclear, or rather no, explanation as to the basis of their claim fails to meet the tenants' burden of proof. I therefore **dismiss** the tenants' claim for **\$1,000.00**.

I also am unable to consider if the tenants are entitled to monetary compensation due to an illegal rent increase, as the tenants failed to prove the amount of rent or that they received a notice of a rent increase. I therefore dismiss their claim to dispute a rent increase.

Due to the above, I **dismiss** the tenants' application without leave to re-apply.

I note that I have not addressed the issue of the tenants' security deposit, as the tenants did not apply for the same and there was no proof of payment of a security deposit.

Conclusion

The tenants' application is dismissed without leave to re-apply.

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: November 25, 2011.

Residential Tenancy Branch