

DECISION

Dispute Codes MNDC, LRE, O

Introduction

This is an application filed by the Tenant for a monetary order for compensation for loss of quiet enjoyment and an order to suspend or set conditions on the Landlord's right to enter the rental unit.

Both parties attended the hearing by conference call and gave testimony. Although not named in the application, the Tenant, L.M.E. acknowledges that, C.P. is a Landlord for the rental property. The Tenant states that C.P. was not placed on the application as he was not listed on the Tenancy Agreement. I accept that C.P. is a Landlord for this rental and the application and any subsequent documents shall be amended to include the individual, C.P. as a Landlord for this dispute.

Both parties have acknowledged receiving the evidence packages filed by the Tenant that have been submitted with the file. The Tenant states that there was an additional evidence package that was sent by courier that is not in the file. The Landlord acknowledges receiving this package. The hearing shall proceed and both parties are able to make detailed references in their direct testimony regarding this missing evidence. As both parties have attended the hearing and have acknowledged receiving the evidence package from the Tenant, I am satisfied that each has been properly served under the Act. The Landlord has not submitted any evidence.

Issue(s) to be Decided

Is the Tenant entitled to an order to suspend or set conditions on the Landlord's right to enter the rental unit?

Is the Tenant entitled to a monetary claim for loss of quiet enjoyment?

Background and Evidence

This Tenancy began on June 15, 2011 on a fixed term tenancy until June 30, 2012 as shown in the submitted signed tenancy agreement. The monthly rent is \$1,850.00 payable on the 1st of each month. A security deposit of \$925.00 and a pet damage deposit of \$325.00 were paid.

The Tenant seeks an order to suspend or set conditions on the Landlord's right to enter the rental unit. The Tenant states that between February 3 and 11, 2012 the Landlord entered the rental unit. The Tenant states that notice was received that the Landlord would need to enter the rental unit twice during this time to complete painting, drywalling of repairs regarding the mold/moisture issues. The Tenant states that various personal paper documents that were left out had been moved/removed. The Tenant states that almost all counter surfaces were cleared and that the various documents have been found in random drawers. The Tenant states that several notices received by the Tenant were removed. The Landlord states that his partner, R.R. is a full time cleaner and that she attended during this period of time to clean the entire rental after the repairs were completed. The Landlord also states that R.R. disposed of these notices as she believed them to be trash. The Tenant has acknowledged that she was aware that the Landlord was attending the rental unit during this time to complete repairs.

The Tenant is seeking a monetary order for compensation of \$2,688.88. This claim consists of \$1,850.00 for loss of quiet enjoyment and \$838.88 (\$749.00 +12%HST) for compensation for the replacement of a mold covered mattress. The Tenant states that a mold/moisture issue began in October that resulted in approximately 20 visits by the Landlord and/or contractors to resolve the issues. The Tenant states that the Landlord began dealing with the issue in late October until approximately late January. The Tenant is seeking \$1,850.00 stating that in her direct testimony that this was an arbitrary amount that the Tenants thought was fair for compensation. The Landlord disputes the Tenants claim. The Landlord states that the moisture issues were addressed within a reasonable time period, but that the mold/moisture issue persisted because the Tenant's refused to turn on the heat. As a result of this, moisture/condensation occurred causing the mold to persist. The Landlord states that the rental property is 30 years old and has proper venting. The Landlord states that fans and dehumidifiers were installed right after being informed of the problem. The Tenant has also requested \$838.88 for the replacement cost of a kingsize mattress. The Tenant stated that the mattress has not been replaced and that the mattress is still in use by the Tenant. The Tenant stated in her direct testimony that nothing has been done to the mold on the mattress and that it still exists. The Tenant states that the cost for the mattress is based upon an estimate of a discontinued item from Ikea. The Tenant has not provided any documentary evidence of the replacement value. The Landlord disputes this stating that the Tenants are still using the mattress and that they are not responsible for it.

Analysis

Section 32 of the Residential Tenancy Act states,

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find based upon the direct testimony of both parties that the Landlord has acted in good faith by giving notice to the Tenant to deal with the moisture and repair issues. The Landlord gave sufficient notice and the Tenant should have known that the Landlord would clean after themselves for these repairs. The Tenant has not provided any evidence of any recurring breach and I must infer that this was an isolated incident. The Tenant has also stated that no loss has been suffered. I find that a minor inconvenience occurred through a breakdown in communication to the Tenant by the Landlord that has not been repeated and as such decline to make any order to suspend or set conditions on the Landlord's right to enter the rental unit.

As for the Tenant's monetary claim, I find that as neither party has submitted any evidence as to who is responsible for the moisture, I decline to make a finding on that issue. 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 their claim, the party making the claim has not met the burden of proof, on a balance of

probabilities, and the claim fails. As this is the Tenant's application, the burden of proof falls to the applicant. Further the Tenant has not suffered any financial loss regarding the mattress. The Tenant's were inconvenienced by the Landlord's actions, but suffered no loss. As such, the Tenant's entire monetary claim is dismissed without leave to reapply.

Conclusion

The Tenant's application is 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: March 06, 2012.

Residential Tenancy Branch