



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and for an order requiring the landlord to comply with the Act.

The parties appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Has the tenant established an entitlement to an order requiring the landlord to comply with the Act?

Background and Evidence

This tenancy began on July 1, 2011, current monthly rent is \$834.00 and the tenant paid a security deposit of \$400.00 on or about June 15, 2011.

The tenant's monetary claim is in the amount of \$375.00, for a loss of his quiet enjoyment. Upon questioning, the tenant stated that he arrived at this amount due to three months, May, June and July, where he suffered a loss of quiet enjoyment, at \$125.00 per month.

The tenant said despite his complaints about the second hand smoke coming from the rental unit below him, the landlord failed to adequately address the problem and that he

continued to suffer the effects of the smoke until September 4, 2012, when the landlord properly sealed the pipes and walls in the two rental units. The tenant agreed that the problem has now been corrected.

Into evidence, the tenant submitted a spread sheet, entitled "Smoking Infiltration log," showing periods when the tenant noticed the smoking and the severity of the presence of smoke, from light to heavy. I note that the first date mentioned was April 30, 2012 until August 2, 2012. The tenant also submitted witness letters and a letter to the landlord requesting proper sealing to keep out the second hand smoke. The letter is dated April 5, 2012, but the tenant said this was an incorrect date and that the date actually was August 5, 2012.

In response, the landlord said that each time they received a letter from the tenant, the problem was addressed with the tenants in the other rental unit. The landlord referred to their evidence, which showed that upon receipt of a letter from the tenant, the response was notated.

The landlord submitted that they believed the problem had been corrected, due to the tenant's statement on a May 20, 2012 letter, stating that the other tenant had seemed to stop smoking.

The landlord said that it was not until they received the tenant's application for dispute resolution that they were made aware that the tenant still had complaints about the second hand smoke. At this time, they contacted a contractor to provide the proper sealing.

In response, the tenant said that after the May 20 letter, he provided no further letters as he was tired of writing letters.

Analysis

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the party took reasonable measures to mitigate their loss.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

The tenant alleges that the landlord intentionally failed to satisfactorily address the issue of the second hand smoke coming from another rental unit, causing a loss of his quiet enjoyment for May, June and July 2012.

In the circumstances before me I am not persuaded that the landlord was negligent and I find that the landlord took reasonable steps to address the second hand smoke issue raised by the tenant. In reaching the conclusion, I found the landlord's notations of each action taken on the tenant's earlier letters and the tenant's May 20, 2012 letter showing that he was satisfied that the other tenants had stopped smoking to be compelling and persuasive.

I also relied on the tenant's failure to submit evidence that he issued written or oral notification to the landlord regarding a continuing problem with second hand smoke.

Without such proof, I cannot conclude that the landlord knew that the problem had not been corrected.

Conclusion

As I find the tenant submitted insufficient evidence to support his claim that the landlord was negligent due to the above reasons, I dismiss the tenant's application for a monetary award, without leave to reapply.

As the tenant acknowledged that the rental units have now been properly sealed, I also dismiss his request for an order requiring the landlord to comply with the Act.

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 17, 2012.

Residential Tenancy Branch