



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 under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss.

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 evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

I heard undisputed testimony that this tenancy began in April 1982 and ended in 2011. The tenant said the tenancy ended on August 28, 2011, and the landlord said it ended earlier.

The tenant's monetary claim is in the amount of \$9360.00, which is comprised of paint used during the tenancy to paint the rental unit, in the amount of \$360.00, and \$9000.00

for loss of enjoyment of the rental unit, particularly for the last 4 years of the tenancy. The tenant listed compensation requested at 50% of his monthly rent of \$375.00, for 48 months.

In support of his application, the tenant submitted that he repainted the rental unit himself approximately every 5 years, as he feared the landlord would evict him if he did not maintain the rental unit by painting the rental unit himself. The tenant submitted that the landlord failed to periodically repaint the rental unit, as required under the Act, and that he was entitled to be reimbursed for paint purchase.

The tenant said that he suffered from a lack of heating or had heating issues since the tenancy began, that at the time he moved into the rental unit there was not a proper faucet in the bathroom tub, causing the tenant to bathe by using a hose from the sink, and that there was a serious mould problem in the bathroom.

The tenant submitted that the extensive presence of mould caused health and breathing problems. The tenant referred to the statement of his physician.

The tenant also submitted that the rental unit lacked a proper stove, requiring the tenant to use a hot plate as his source for cooking, and that the refrigerator developed a frayed cord two years ago.

In summary, the tenant claimed the landlord failed to maintain the rental unit during the tenancy in a state as required under the Act, particularly the last 4 years for which he seeks compensation.

The tenant's relevant evidence included a physician's statement claiming mould as the source of the tenant's chronic illness and copies of photos of the rental unit, which I note were unclear.

In response, the landlord said that the rental unit was well maintained, as was the rest of the building and denied that the rental unit was in a state of disrepair.

The landlord said that he was unaware of the tenant's complaints listed in his claim, and that the tenant did not bring forth these issues during the tenancy.

The landlord denied there were heating issues during the tenancy as the tenant did not bring forth such issues. The landlord also referred to the statement of his plumbing contractor, which indicated an inspection was performed after the tenancy ended,

showing no issues with the piping and no presence mould or disrepair causing difficult work by the plumbers.

The landlord's relevant evidence included other tenants' statements and the landlord's plumber's statement.

Analysis

Based on the relevant oral and written 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 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.

As to the tenant's request for paint costs, the tenant failed to submit proof that he incurred such a cost and therefore failed to meet the third step of his burden of proof. I therefore dismiss his claim for \$360.00.

As to the tenant's remaining claim of \$9000.00, I find the tenant has failed to submit sufficient proof to support this claim. In reaching this conclusion, I considered that there was no evidence that the tenant ever notified the landlord of an existing or ongoing repair problem during the tenancy, for which would the landlord would then be responsible for addressing.

Where a tenant requests repairs, the landlord must be afforded a reasonable amount of time to take sufficient action and without proof that the tenant made such requests, I cannot conclude that the landlord's actions or response were insufficient.

I also took into account that the physician's statement was dated on January 8, 2008, yet the tenant continued to live in the rental unit for another 3 ½ years.

I also took into account that although the tenant said that serious problems existed since the tenancy began, he continued to live there for 29 years.

Due to the above, I find that the tenant submitted insufficient evidence to support that the landlord was negligent or caused a loss to the tenant and I also find that the tenant submitted insufficient evidence that he took reasonable steps to minimize his loss by his failure to address any alleged problems when any may have occurred.

I therefore find the tenant has not met his burden of proof and I dismiss his application, 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: January 09, 2013.

