



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Helping Spirit Lodge
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC

Introduction

This hearing was convened in response to an application filed by the tenant seeking money owed or compensation for loss under the Act, regulation or tenancy agreement.

The tenant attended the hearing. The landlord did not. I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant was given full opportunity to be heard, to present evidence and to make submissions. Prior to concluding the hearing the tenant acknowledged they had presented all of the relevant evidence that they wished to present. The tenant was aided by an advocate

Issue(s) to be determined

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenant testified that they provided the Branch a package of evidence – the tenant's medical history - which they did not provide to the landlord. In fact, this hearing does not have a record of that evidence, which if available would not have been admissible as it was not provided to the landlord. This hearing does have benefit of all other evidence which the tenant claims they provided to the landlord, and for which they have provided proof of mail registration. The tenant provided a quantum of document evidence consisting of photographs, some medical consultation summaries from early 2010, receipts and an invoice. The most recent evidence is a one page document dated April 2013: a list provided to the tenant by a physician at the tenant's request listing all of the tenant's medical conditions and their care plan.

The undisputed evidence in this matter is that the tenancy ended January 31, 2013. The tenant testified that since 2011 they became ill – developed certain medical issues, they did not previously have, which they determine were caused by exposure to 'black

mould” inside the walls of their rental unit. At the outset of their symptoms they alerted the landlord to a potential issue and the landlord professionally confirmed the air quality in the rental unit was healthy. Concerned about a potential mould presence, the tenant employed a renovations contractor to cut holes into the drywall near an area they thought had been compromised by a previous roof leak. The tenant and their advocate viewed the inside of the wall and determined there was some presence of mould. The tenant provided some close-up photographs of what they claim was mould: a small amount of residue, black in colour, “smelled musty”, and some residue which appeared like “green algae”. The tenant testified that other than what was seen in the photographs there were no other indicators, inside or outside the exposed wall. As a result of the drywall openings, the tenant went to a hostel for the following 3 months and testified they felt better than when in the rental unit.

The tenant also provided medical consultations from before the rental unit issues which describe the tenant as nearing 70 years old with, Hypertension, Heart disease, Diabetes, and morbid obesity, and other medical conditions. The tenant also provided a recent list of their 12 medical conditions. This document mentions the possibility of exposure to black mould, without certainty.

The tenant seeks all of their rent for the previous 2 years, hostel rent, and contractor cost, in the sum of \$11,770.00.

Analysis

In this matter the burden of proving claims of loss rests on the claimant (tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord’s neglect, or failure to comply with the Act. And, if so established, did the claimant (tenant) take reasonable steps to mitigate or minimize the loss? Section 7 of the Act outlines the foregoing as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Effectively, the tenant must satisfy each component of the test below:

1. Proof the loss exists,
2. Proof the loss occurred solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the *Act* by taking reasonable steps to minimize the loss or damage.

The tenant bears the burden of establishing their claim by proving the existence of their loss (medical issues), and that they stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. Once that has been established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation and to mitigate the losses that were incurred.

I find the tenant has not effectively shown or proven the nature of their loss. The tenant has not been able to prove - amongst their abundance of medical issues – that which is a loss attributable to the purported offending conditions in the rental unit, or the neglect or conduct of the landlord. The tenant's evidence in no way makes bridges or verifiable connections to the conditions they claim they revealed in their rental unit. I am not satisfied that the landlord was negligent, or that non-compliance with the *Act* by the landlord resulted in the tenant's claimed loss. On the balance of probabilities, I find the tenant has not met the test for loss and as a result **I dismiss** the tenant's application in its entirety, without leave to reapply.

Conclusion

The tenant's application **is dismissed**, without leave to reapply.

This Decision is final and binding on both parties.

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: May 08, 2013

Residential Tenancy Branch