



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing was convened in response to an *orally amended* application originally filed by the tenant, seeking a Monetary Order pursuant to the *Residential Tenancy Act* (the Act) as follows:

- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement – for loss of use / devaluation of the tenancy - Section 67
- To recover the filing fee from the landlord for this application (\$100) – Section 72

Both parties participated in the hearing and provided testimony. As well, the parties forwarded evidence / submissions prior to the hearing, which each party confirmed receiving.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

It is undisputed this tenancy started in mid-October 2012, and the tenant vacated the unit in mid-March 2013. Rent was \$1200.00 per month. The unit was the upper portion of the residential unit.

The tenant claims that during the tenancy they experienced problems associated with presence of excessive moisture due to water ingress issues from the unit windows and a failing roof above the unit. The landlord and tenant testified that soon after the outset of the tenancy the landlord was informed of a leaking window and some associated mould presence as a result. The parties further testified that in the months following the tenant experienced some additional water ingress from above them and an increased presence of mould within the unit. On December 13, 2012 the ceiling of the unit became compromised and a hole developed along with debris and water entering the unit. The landlord invoked the service of a roofer at the end of December 2012 which confirmed the roof was compromised to an extent and required replacement; and, a

different roofer attempted a repair / patch - believed to have sufficiently resolved the reported roof problem. On January 23, 2013 the tenant reported the leak was not resolved and additional ceiling damage was noted. The landlord again had the roof assessed and on February 07, 2013 another repair seems to have resolved the water ingress. Throughout, the tenant claims they encountered a persistent presence of mould in the unit affecting some of their soft furnishings, use of the bedroom, and purportedly compromising their health. The tenant now seeks rent abatement for the duration of the tenancy October 2012 to March 2013 as an expression of a devalued tenancy and their loss of use. The tenant testified that as a result of all the water ingress issues during the entire tenancy the tenancy was not worth the amount which the parties originally contracted, but that on reflection they are not owed the entire amount of rent paid from the outset of the tenancy. The parties agreed the landlord provided the tenant with compensation of \$200.00 per month for January through March 2013, which the tenant has determined is insufficient compensation.

Analysis

On preponderance of the *relevant* evidence in this matter, and on the balance of probabilities, I have arrived at the following findings.

I find that I prefer the evidence of the tenant – that the water ingress issues from the window, and primarily and more persistently from the roof, very likely caused mould growth within the unit and compromised the tenant's right to quiet enjoyment of the unit for which they contracted at \$1200.00 per month. I find that despite the efforts of the landlord they did not provide the tenant with a rental unit suitable for occupation without the inherent problems of a compromised roof. I find the problems of the rental unit were of sufficient annoyance and inconvenience to the tenant that it devalued the tenancy and caused them loss of use. As a result, I find it reasonable that the tenant is entitled to a rent abatement equivalent to 35% of the payable rent under the tenancy agreement. The tenant's entitlement is the total of all fractional entitlements in the sum which follows, without leave to reapply. I further find the tenant is entitled to recover their filing fee.

\$ 210.00 for October 2012

\$ 420.00 for November 2012

\$ 420.00 for December 2012

\$ 220.00 for January 2013 - *having been compensated \$200*

\$ 220.00 for February 2013 - *having been compensated \$200*

\$ 220.00 for March 2013 - *having been compensated \$200*

\$ 100.00 filing fee

\$ 1810.00

Conclusion

I have granted the tenant compensation for loss and recovery of the filing fee in the sum of **\$1810.00**, without leave to reapply.

I grant the tenant an Order under Section 67 of the Act for the amount of **\$1810.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision and Order 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 15, 2013