



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ONE WEST PROPERTIES CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

The tenant applies for the return of the tenant's security deposit and pet damage deposit, and for a monetary order related to costs and losses related to condensation and mold in the premises.

Issue(s) to be Decided

1. Is the tenant entitled to an order regarding the return of the deposits?
2. Is the tenant entitled to a monetary order for costs and losses attributable to condensation and mold?

Background and Evidence

This tenancy began on March 26, 2012, and ended on March 31, 2013. Monthly rent was \$1,595.00. A security deposit of \$797.50 and a pet damage deposit of \$797.50 was paid at the start of the tenancy. Both deposits were returned to the tenant prior to this hearing.

When the tenancy began there was no evidence of any condensation or mold problem in the premises. The owner had formerly occupied the premises and had not experienced a problem. For the first 6 months of the tenancy, there was no discerned problem with condensation or mold.

The tenant discovered a significant condensation problem in December. The tenant had to use towels to mop up water that collected under windows every few days. Mold began to form. When moving, the tenant discovered mold beside her daughter's bed, and on the bed itself. She had to throw the bed out, which was only about 1 ½ years old, and which had cost over \$750.00. The tenant alleges her electricity bills increased by about \$300.00, due to having to maintain the heat higher than normal, and due to extra laundering of towels.

The landlord contends that it is common knowledge that any residence has the potential for condensation forming, and if condensation is noticed at its onset, it is not a difficult matter to control it. The landlord alleges that the condensation in this case went unchecked, as the tenant had regularly left her blinds down, had blocked some windows with furniture, and did not regularly inspect for condensation. Once the problem was

noticed, it was resolved within 2 to 3 weeks, demonstrating it was not an inherent problem in the building, but a controllable issue.

The landlord denies knowledge of any prior issue with condensation. The landlord further contends increase costs for heat is common and to be expected in winter months.

Analysis

As the deposits have been returned in full to the tenant, the tenant's claim for recovery of the deposits is dismissed.

As the tenant correctly notes, mold can be a serious health concern. The presence of uncontrolled moisture or condensation can quickly lead to the formation of mold.

Section 32(1) of the Act requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32(2) requires that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the premises and property.

As a general rule, the party claiming damages (in this case the tenant) against the other party bears the onus of proof to establish the other party violated the Act, regulations or tenancy agreement, resulting in the claimed losses. The party claiming the damages must show they did whatever was reasonable to minimize the damage or loss.

In this case, the tenant has not proven as required, on a balance of probabilities, that the premises had a pre-existing problem with condensation or mold. The evidence satisfies me that there was no problem one month prior to the tenancy, when the landlord's agent had inspected the premises, and there was no evidence of any problem when the move-in inspection was done. There is similarly no evidence of the owners having covered up an indication of a condensation or mold problem. Accordingly, it is not established that the landlord failed to provide housing that complied with proper health, safety or housing standards, or omitted to disclose a condensation problem to the tenant.

The landlord contends that it was issues related to the tenant's lifestyle that resulted in the formation of excessive condensation. This is possible, but it is also possible that the building structure was more inclined to have a condensation problem than normal, and it also possible that both of these issues contributed to the heavy condensation that began to occur. A "possibility" fails to meet the tenant's burden of proof, however. The tenant must show a probability, not just a possibility, to establish her claim as against the landlord .

Further, I agree with the landlord's contention that the fact the condensation build up was controlled within a few weeks points to a likelihood that the condensation was not an inherent problem, but was a controllable issue by the resident. I further accept that the tenant knew or should have known, to check windows for the onset of condensation, and to use ventilation measures to control such issue. As such, there is validity to the argument of the landlord that reasonable steps were not taken by the tenant to avoid or prevent the losses she suffered.

In addition to the above, and regarding the increase in utility costs, it is possible that the costs relate to extra heat and ventilation costs to control moisture and extra laundry costs. However, it is also possible that the increase was attributable in large measure to a cooler period that required additional heat service in any event. The tenant has failed to prove that the landlord is liable for the increased utility cost.

While it is certainly unfortunate that the tenant has suffered a loss due to the condensation and resulting mold issue in the premises. The tenant's evidence fails to prove that the landlord is shown to be liable for that loss.

For these reasons, the tenant's application to recover the cost of the bed, and the increased utility costs are dismissed. It follows that the claim to recover the filing fee is dismissed as well.

Conclusion

The tenant's claim is dismissed, in full.

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: June 14, 2013

Residential Tenancy Branch