



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

The Landlord applied on March 27, 2013 for:

1. An Order for unpaid rent or utilities - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on June 10, 2013 for:

1. A Monetary Order for compensation or loss - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started in approximately May 2010 and ended on March 31, 2013. Rent of \$1,400.00 was payable monthly. No move-in or move-out inspection was conducted. No rent was paid for March 2013.

The Tenant states that the roof was leaking at move-in and was repaired two years later. The Tenant states that the kitchen sink also leaked from the onset and that although the Landlord was informed the Landlord did nothing so the Tenant repaired the leak on more than one occasion. The Tenant states that mold was also present at move-in and although the Tenant informed the Landlord, the Landlord did nothing. The Tenant states that throughout the tenancy the Tenant would clean the mold but could not keep up and it got worse. The Tenant states that as a result of the mold, the Tenant's personal belongings were damaged. Although the Tenant states that items such as bedroom furniture were replaced, the Tenant had no receipts for these purchases. The Tenant provided photos of the unit.

The Landlord states that unit was mold free at the onset of the tenancy and that the Tenants only told the Landlord at the end of the tenancy that there was mold but refused to allow the Landlord access to see the problem. The Landlord states that repairs were made by himself and the Tenant during the tenancy and that the Tenant was given a rent reduction for the Tenant's work. The Landlord states that the Tenant told the Landlord that the kitchen leak had been fixed during the tenancy but at the end told the Landlord of the leak occurring and again but refused the Landlord entry.

The Tenant states that the Landlord was never denied access and that no rent deductions were ever given to the Tenant. The Tenant states that the unit was very dirty at move-in and the Tenants cleaned the unit. The Landlord states that no damage deposit was taken in return for the Tenant's agreement to paint the unit.

The Landlord states that rent was not paid for March 2013 and that the Tenant told the Landlord on March 1, 2013 about a leak but that the landlord was unable to contact the Tenant until March 18, 2012 when the Tenant informed the Landlord that they were moving out at the end of the month. The Landlord states that since the Tenant moved out he has been doing renovations and that the renovations are due to the Tenant's damage. The Landlord states that he did not include a claim for these damages as he

did not know that he had to have receipts and amend the application in order for it to be considered.

The Landlord states that the Tenant had a grow-op in the back shed and that it was discovered that a line from the grow-op was leaking into the wall of the unit and that this caused the mold. The Tenant states that the Landlord has a previous grow-op at the unit and that the Tenant knows the previous tenants who operated the grow-op in exchange for free rent. The Tenant states that she had children and would not have a grow-op. The Landlord states that he cannot believe the Tenant's statements and that the shed was empty at the outset of the tenancy.

The Landlord states that on March 18, 2013 the Tenant informed the Landlord that rent for March would not be paid and that the Tenant was moving out of the unit at the end of March 2013. The Landlord claims unpaid rent for March and April 2013.

Analysis

Section 32 of the Act provides that a landlord must 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 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Although each Party states that the other Party had a grow-op at the unit indicating that this grow-op caused the mold in the unit, I note that neither Party provided any evidence to support this allegation. Given the photos of the Tenant however, I accept the

Tenant's evidence that the unit had mold. I also find the Tenant's evidence of the Landlord's knowledge and lack of response to the mold to be persuasive. I find therefore that the Landlord breached the Act by failing to keep the unit in a reasonable state. I also accept the Tenant's evidence that they finally moved out of the unit due to the constant cleaning required. As the Tenant has not provided any invoices or receipts for the losses claimed, the most that can be provided is a nominal amount equivalent to one month's rent of \$1,400.00.

Based on the undisputed evidence that the Tenant failed to pay March 2013 rent, I find that the Landlord has substantiated a monetary entitlement to \$1,400.00. As there is no evidence to show that the Tenant caused damages to the unit that required extensive renovations to the unit and therefore loss of rental income, I dismiss the Landlord's claim for rent for April 2013. As the Landlord's application has only been partially successful, I decline to award the Landlord recovery of the filing fee. As each Party is entitled to an equivalent amount, no remaining monies are owed to either Party.

Conclusion

The claim of each Party is concluded as set out above.

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: July 2, 2013

Residential Tenancy Branch