



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, MND, O, FF

Introduction

This Dispute Resolution hearing was to deal with an Application by the landlord for a monetary order for repairs and cleaning and to keep the security deposit in partial satisfaction of the claim. The application was also to deal with the tenant's claim for compensation for a retro-active rent reduction due to the landlord's violation of the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to compensation under section 67 of the *Act* for damages?

Is the tenant entitled to a retroactive rent abatement?

Background

The tenancy began on April 1, 2012 and was terminated by the tenant effective May 2, 2013. Rent was \$900.00 and a security deposit of \$450.00 had been paid.

Landlord's Application

Move-in and Move-out condition inspection reports were completed and copies of these reports were in evidence.

According to the landlord, the unit was left in a state that required cleaning and repair. The landlord testified that, after the move-out condition inspection was done, the parties agreed that the tenant would pay for damage to the unit and some cleaning. The tenant testified that, while they did agree to pay for necessary repairs, claimed by the landlord at a cost of \$367.50, they did not agree to be held responsible for a portion of this claim in the amount of \$20.00 as

it related to a damaged vent the tenant stated was caused by the landlord's contractors. The tenant also disputed the \$100.00 being claimed for the cleaning. The tenant testified that they had left the unit in a reasonably clean state. The tenant acknowledged that there was a residue left in the oven, but argued that this residue remained despite their use of the self-cleaning oven feature that was supposed to remove any food coatings in the appliance.

Tenant's Application

The tenant's claim is for 100% rent abatement for the duration of their tenancy totaling \$10,800.00. The tenant testified that their claim is based on the fact that, during their tenancy, they were unknowingly subjected to mould contamination, that the landlord knew about but failed to address or disclose.

The tenant testified that they were aware of water condensation on the metal windows, which they regularly cleaned and were also conscious of a musty smell. However, in November 2012, after observing that their child had a high incidence of illness, they grew concerned enough to approach the landlord with a request that the possibility of mould be investigated.

The tenant testified that the landlord responded and on November 8, 2012, brought in a contractor to measure moisture in the unit. The tenant pointed out that the contractor was not a certified mould specialist. The tenant testified that they received the results of the investigation and were informed that the contractor concluded that no excess moisture was found.

The tenant testified that their concerns continued for several months and after repeatedly complaining to the landlord, they were released from their obligation to continue the tenancy agreement by the landlord. The landlord initially agreed that they could vacate effective 2 months later, and that the landlord would waive their final month of rent. However, the tenant did not accept this proposal.

The tenant testified that, for the sake of the family's health, they chose not to remain beyond May 2, 2013 and relocated a safer residence. The tenant testified that they found substantial mould at the top of the window that had been hidden by the window treatment. Photos of the affected areas that the tenant contends show mould growth were submitted into evidence.

The tenant testified that they also removed some melamine trim that had been installed around the windows revealing what the tenant believed was mould inside crevices adjacent to the window and signs of long-term moisture damage. According to the tenant, it appeared that the landlord had knowingly installed this trim to obscure a pre-existing mould problem.

The tenant feels that the health of the occupants of this suite had been compromised by an apparent mould contamination and this warrants the compensation being claimed.

The landlord testified that the windows in the suite are functional, but that the metal windows will always attract condensation and the expectation is that the tenant must regularly clean off the water condensation to avoid mould. According to the landlord, the tenant failed to adequately clean and maintain the area around the windows.

The landlord testified that in November they responded without delay to the tenant's initial inquiry and the tenant's request that the landlord examine the unit for mould. The landlord pointed out that they hired a professional contractor to take moisture readings and examine the unit for mould. The landlord stated that the report from the company confirmed that there was no current moisture infusion and no visual evidence of mould. The landlord testified that they were under the impression that this resolved the matter, until the tenant suddenly brought up the issue again in April 2013.

The landlord stated that the tenants took it upon themselves to remove trim around the windows without permission from the landlord. The landlord testified that this trim was placed around the window wells for esthetic purposes, not to hide mould damage. The landlord testified that the tenant did not give them any opportunity to address the alleged problems or investigate the complaint further, and demanded immediate repairs including new windows.

The landlord testified that, because they were not prepared to immediately replace the windows, the tenant became aggressive. According to the landlord, the tenant refused their offer to allow the tenant to end the tenancy effective in 2 months with a rent abatement for the final month. The landlord testified that the tenant chose to leave on short notice, effective July 2, 2013 instead.

The landlord testified that, after the tenant had vacated the suite, the alleged mould problem was thoroughly examined and the premises were found not to be contaminated with mould. The landlord testified that the only source of mould was the surface of the windows, which had been allowed to collect condensed water over a long period of time, without being wiped down.

The landlord argued they fully complied with their responsibilities under the Act. The landlord pointed out that the tenant has not proven the home was unfit and neglected to offer sufficient evidence connecting the health issues with the state of the rental unit. The landlord feels that no compensation is warranted.

Analysis:

Landlord's Claim

In regard to the landlord's claim for \$367.50 for the repairs, I accept the tenant's testimony that the landlord failed to prove that the tenant was responsible for causing damage worth \$20.00 to the vent. Accordingly, I find that the landlord is entitled to compensation of \$347.50 for repairs.

With respect to the landlord's claim for \$100.00 the cleaning, I find that section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened 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 claimed loss,
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord.

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. (my emphasis).

With respect to the state of the oven, I accept the landlord's proof that it was not left reasonably clean. However, I also accept the tenant's testimony that the self-clean oven feature did not function as expected. Therefore I find that this portion of the landlord's claim must be dismissed.

Given the above, I find the landlord is entitled to total compensation of \$347.50.

Tenant's Claim

With respect to the tenant's claim for a rent abatement, I find that the tenant's evidence did indicate that they suffered health problems and that there was likely some water infusions at some time into the unit. However, I find that the tenant failed to meet element 2 of the test for damages as the tenant failed to submit sufficient proof to confirm that their losses were caused by the a proven violation of the Act by the landlord. Given the above, I find that the tenant's monetary claim must be dismissed without leave.

I find that the tenant must be credited with \$450.00 for the security deposit and that the landlord is entitled to compensation of \$347.50 in compensation for damages to be deducted from the security deposit funds being held on behalf of the tenant, leaving a balance of \$102.50 in favour of the tenant.

I hereby issue a monetary order in favour of the tenant for \$102.50 for the remainder of the tenant's security deposit. This order must be served on the landlord in accordance with the Act and if necessary can be enforced through Small Claims Court.

The remainder of the landlord's application and the tenant's application are dismissed without leave. Each party is responsible for their own application costs.

Conclusion

Both parties are partially successful. The landlord is entitled to retain a portion of the tenant's security deposit with a monetary order issued to the tenant for the remainder.

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 31, 2013

Residential Tenancy Branch