



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Conway Visions Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, RP, RR

Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or the tenancy agreement, an order to have the landlord conduct repairs to the unit site or property, an order to allow the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided, and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or the tenancy agreement?

Background and Evidence and Analysis

The tenancy began on or about October 5, 2012. Rent in the amount of \$1400.00 is payable in advance on the first day of each month. The tenant is the sole applicant in this matter and I address the tenant's claims and my findings as follows:

First Claim- The tenant is seeking the return of his security deposit. The tenant will be moving out of the unit later today after this hearing. As this tenancy is still ongoing the

tenant's claim is premature, accordingly; I dismiss this portion of the tenants' application with leave to reapply.

Second Claim – The tenant is seeking to have repairs done in the unit. Based on this tenancy ending later today the tenant abandoned this portion of his claim and I therefore dismiss this portion of the tenant's application.

Third Claim – The tenant is seeking a rent reduction. As in the second claim with the tenant moving out later today he has abandoned this claim and I accordingly dismiss this portion of the tenants' application.

Fourth Claim – The tenant is seeking \$11,250.00 as compensation. The tenant stated that he seeks to be reimbursed half a months' rent (\$700.00) for each month from March 2013- October 2013. The tenant stated that since he was only able to use half of the house he agreed to rent; he should only have to pay half the price. The tenant stated that there was "at least 10-12 floods since early March". The tenant stated that mold had developed throughout the basement. The tenant stated that the landlord did little to fix the problem. The tenant stated that water would pool up inside the basement on a regular basis. The tenant stated that the landlord did not even shampoo the carpets after any of the floods.

The tenant stated that he was very upset when the landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property. The tenant stated the basis of the notice was that the property had to be empty to conduct repairs. The tenant stated that the notice itself was proof that the landlord did not address the issue in a reasonable and quick manner. The tenant stated that his monetary request is fair.

The landlord disputes the tenants claim. The landlord stated that the tenant exaggerated the "floods" and that it was a "water issue involving seepage". The landlord stated it was an underground water line that drew water from a well that was the cause of the water issues. The landlord stated the pumps pressure would cause the "cracked line" to seep into the basement. The landlord stated that it was a difficult item to diagnose and trace and it took many visits to the site. The landlord stated that all

mouldy pieces of drywall were removed immediately and left open to thoroughly dry out the area. The landlord stated that he should have shampooed the carpets and admitted his error. The landlord stated he was conducting his business appropriately and that the tenant should not be entitled to anything.

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of the Act stipulates that a landlord must provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law, and makes the unit suitable for occupation by a tenant.

In the landlord's own testimony and documentary evidence he acknowledges an ongoing problem that he was unable to address and correct in a timely fashion. However, I do not find the issue to be as severe as the tenant purports. I find that the tenant is entitled to some compensation based on the landlord's acknowledgement that the issue is still ongoing since March 2013.

The tenant's calculation for half months' rent from March 2013- October 2013 does not equate. The tenant stated he is seeking \$11,250.00 however using the tenant's own testimony and request at the hearing the amount sought would be \$700.00 x 8 months =

\$5600.00. As stated above I accept the tenancy value was decreased due to the issue of water leaks. I find that the appropriate amount of compensation is \$200.00 per month X 8 months = \$1600.00. It is worth noting that the mold report the tenant submitted was very generic and was not very detailed. The report did not specify an address or identifier, it was of limited value.

As for the monetary order, I find that the tenant has established a claim for \$1600.00. I grant the tenant an order under section 67 for the balance due of \$1600.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for \$1600.00. The tenant has leave to reapply for any security and or pet deposit that he may have provided to this landlord.

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: October 31, 2013

Residential Tenancy Branch

