



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Balmoral Hotel
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, ERP, OLC, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order requiring the landlord to make repairs and emergency repairs to the rental unit, for an order requiring the landlord to comply with the Act, and a monetary order for money owed or compensation for damage or loss.

The tenant, his advocate and the landlord's agent (hereafter "landlord") attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

At the outset of the hearing, the landlord acknowledged receiving the tenant's documentary evidence and confirmed not submitting documentary evidence himself.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matter-The tenant confirmed at the hearing that he was vacating the rental unit at the end of February. As a result, I have amended the tenant's application seeking an order for repairs and emergency repairs, and for the landlord's compliance as these are issues in contemplation to an ongoing tenancy.

The hearing proceeded on the tenant's request for monetary compensation.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation?

Background and Evidence

The tenant submitted that the tenancy began on December 10 and the landlord submitted that this tenancy began on December 13, 2013.

The tenant stated that monthly rent is \$475 and the landlord submitted that the monthly rent is \$450.

The tenant stated that he paid a security deposit of half the monthly rent and the landlord submitted that the tenant paid a security deposit of \$225.

The rental unit was a single room occupancy unit.

There is no written tenancy agreement memorializing the terms of the tenancy agreement.

The tenant's monetary claim is \$2000, although he did not provide a detailed calculation as required by section 59(2)(b) of the Act. The tenant explained that he is entitled to compensation due to the landlord failing to make required repairs, reducing the value of the tenancy.

In support of his application, the tenant submitted he had a rodent infestation in his rental unit, as he saw mice go in and out of his room and observed mouse droppings in the rental unit.

The tenant further submitted that he suffered a loss of heat in the rental unit, as the window was out of alignment, and cold air entered the unit.

The tenant submitted that he attempted to notify the landlord, but the landlord would consistently be too busy to speak with him about his issues.

The tenant further submitted that he was deprived of a refrigerator in his rental unit as the landlord refused to repair the one in his room, causing food loss and increased food costs.

The tenant further submitted that he suffered mental anguish as he was displaced from his rental unit, due to the above issues, causing him to be homeless.

In response to my question, the tenant confirmed not addressing his issues with the landlord in written form.

The tenant's advocate submitted that the report from the municipality documents the many health and safety violations of the landlord.

The tenant's relevant documentary evidence included copies of photographs, which were too dark to be of use, a written statement from the tenant, a report of maintenance

violations issued by the municipality, and a documentation of the tenant's health problems.

In response, the landlord submitted that they have a comprehensive pest control program in place in conjunction with a pest control company and that when he was notified of the tenant's complaints by way of receipt of the tenant's application, he addressed the request immediately.

The landlord likewise said that when he was notified of the tenant's problem with the window, he had his staff maintenance crew make the adjustment immediately.

The landlord submitted that the rental unit is on a single room occupancy basis, and that no refrigerator was supplied to the tenant, speculating that the appliance was possibly left from another tenant.

As to the report of maintenance standards as pointed out by the tenant, the landlord submitted that the residential property is a 94 year old hotel, naturally having difficulties; however, the landlord submitted that they are continually working to correct the deficiencies.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the tenant in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In the case before me, I find that the tenant submitted insufficient evidence to support his monetary claim. The tenant failed to supply any evidence that he ever notified the landlord of any requests for repairs or to provide extermination, which I find could be verified with written requests containing the dates.

As the landlord disputed that he had received such requests from the tenant, I could not rely on the conflicting testimony, which I find fails to prove the tenant's version of events in light of the landlord's differing, equally probable version of events.

Neither party had any supporting witness statements or other evidence to rely upon to support their respective positions.

I find that disputed oral testimony does not sufficiently meet the bearer's burden of proof.

I further find that the tenant failed to submit evidence showing that he suffered mental anguish as the result of the landlord's actions.

Due to the above, I find the tenant submitted insufficient evidence to support his application for monetary compensation and I therefore dismiss his application, without leave to reapply.

Conclusion

The tenant's application is dismissed.

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: March 5, 2014

Residential Tenancy Branch

