



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

These hearings were convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for the return of all or part of the pet damage or security deposit and for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement. The Tenant also applied to recover the filing fee for the cost of this Application.

Legal counsel for the Landlord (“JM”) and the Tenant appeared for both hearings. During the first hearing I determined that the Tenant had served the Landlord with the hearing documents in accordance with the Act.

The first hearing heard the Tenant’s evidence and the second hearing focused mainly on the Landlord’s rebuttal.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed the evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issues

At the start of the first hearing, the Tenant was seeking the return of double the amount of the security deposit paid at the start of the tenancy. However, the Landlord was allowed to keep the Tenant’s security deposit as a result of a hearing that was held with the same parties on December 5, 2013, the file number for which is referenced on the

front page of this decision. Section 77 of the Act provides that a decision or an order is final and binding on the parties. As this matter has already been dealt with in a previous hearing, I dismiss the Tenant's claim for the return of double the amount of the security deposit.

At the start of the second hearing, JM explained that she had submitted four pages of additional evidence for the reconvened hearing. However, I pointed JM to my Interim Decision which clearly prohibited any of the parties from submitting further evidence for these proceedings. However, JM did not receive the Interim Decision as it was sent to an incorrect address by the Residential Tenancy Branch. As JM's additional written evidence referred only to written submissions, I did not consider the written documents provided as evidence because JM had the opportunity to provide these written submissions as testimony during the reconvened hearing which formed part of her rebuttal to the Tenant's evidence from the first hearing.

Issue(s) to be Decided

- Is the Tenant entitled to monetary compensation for losses she claims to have incurred during and after the tenancy?

Background and Evidence

Both parties agreed that this tenancy started on January 1, 2013 for a fixed term of two years due to end on December 31, 2014. Rent during the tenancy was payable by the Tenant in the amount of \$4,500.00 on the first day of each month.

The Tenant's Application discloses a total monetary claim against the Landlord for \$86,805.00. However, the Tenant has only applied for \$25,000.00 in relation to the statutory claim amount prescribed by section 52(2) (a) of the Act and the Small Claims Act.

The Tenant testified that on June 25, 2013 she reported to the Landlord's agent in writing about a mold and water issue present in the basement level of the three floor rental house. The Tenant testified that on June 28, 2013, the Landlord started remediation work rendering the entire basement suite and half of the middle level unusable for the time it took to complete the work. As a result, the Tenant claims for half a month's rent for July, 2013 and 25% off August, 2013 rent, for a total amount of \$3,375.00. In addition, the Tenant claims \$6,750.00 for the loss of enjoyment of the rental suite while the work was being carried out.

The Tenant claimed that the mold in the rental suite caused her son a severe rash to his body and provided a number of photographs showing redness, cracking and peeling to his skin. As a result, the Tenant claims \$6,750.00 for her son's illness.

In support of the remediation work, the Tenant provided a number of photographs relating to the construction work which pointed to the black mold that was removed. The Tenant testified that her furniture and possessions in the basement suite were removed by the construction crew to the second level and as the Tenant and her son were previously sleeping in the basement level, they had to sleep in a tent which was pitched in the living area on the second floor. The Tenant provided a photograph in support of this and testified that she was unable to use the other bedrooms located on the third floor of the rental suite because she was using these to host international students, for which was receiving monetary compensation.

The Tenant submitted that the Landlord had hired the cheapest company possible to deal with such a sensitive issue as mold removal and claims that this was not done properly. The Tenant testified that instead of the restoration company using containment procedures to remove the mold, they simply ripped out carpets from the basement level, dragged them through the rental suite, and dumped them outside of the house for removal, instead of properly bagging them up. The Tenant provided a photograph which shows a thin piece of plastic sheeting placed across the tile floor which the Tenant claims was used by the contractors as the only form of protection for the floor. The Tenant also pointed to a photograph which she claims shows footprints on a stool; the Tenant claims that the contractors used the footstool and other items of furniture belonging to her to conduct the repairs.

The Tenant claims that the contractors informed her that the mold had already been previously remediated and was present before she moved into the property. The Tenant submits that as a result of this the Landlord was aware of the problem before renting the suite to the Tenant.

The Tenant claims \$2,205.00 for time she took off work to be at the rental suite when the contractors were conducting the repairs to ensure they were completing the work properly and not using her furniture to complete the work. The Tenant submitted that the Landlord had asked her to be there to let the contractors in. The Tenant claims for nine days at seven hours each, and provided an "Earnings History" document which indicates her hourly wage as \$35.00.

The Tenant testified that she lost \$3,800.00 from all five international students she was hosting who eventually left as a result of the mold remediation work and disturbance.

The Tenant requested in an email to the Landlord on July 2, 2013 to end the fixed term tenancy on September 1, 2013 without penalty and requested rent abatement for the problems with the tenancy. The Landlord replied to the e-mail at the end of July, 2013 proposing to end the tenancy on September 1, 2013 or August 15, 2013 but the security deposit would have to be forfeited and no rent abatement would be provided.

However, the Tenant testified that as the Landlord's failed to give her monetary compensation for the problems in the tenancy she felt that she was effectively forced and pushed into moving out at the earliest opportunity for August 15, 2013 to save money as the Landlord refused to compensate her. As a result, the Tenant testified that due to this short period of time of her having to leave the tenancy, she incurred the following losses which she claims from the Landlord:

- \$950.00 for movers costs and \$675.00 for cleaning costs as evidenced by invoices. The Tenant testified that she would have cleaned the unit and moved her possessions by herself had she be given more time to leave the tenancy;
- \$2,450.00 for time taken off for the move as evidenced by the "Earnings History" document;
- \$8,000.00 for lost possessions. The Tenant provided a list of items which she claims she was forced to give away and did not have time to sell because the Landlord forced her out; and,
- \$42,750.00 for lost revenue relating to the five students that the Tenant lost during the remediation work and for which she would have received this amount had she remained in the fixed term tenancy.

During the second hearing, JM made a number of detailed submissions aimed at disputing the entirety of the Tenant's claim. I have summarised the relevant submissions made by JM in relation to the Tenant's monetary claim as follows:

- The Tenant had not provided any medical reports, copies of prescriptions and costs for her son's illness claim. The Tenant had failed to show that the presence of mold in the basement suite was the cause of the son's illness indicated in the photographs and this could have been caused by a number of different allergies; the amount being claimed was primarily arbitrary and baseless.

- The Landlord did not have any knowledge of mold in the basement suite prior to the tenancy starting and the Tenant failed to submit supporting evidence showing this to be the case.
- The Tenant was not experienced in mold remediation work and was not in a position to comment on the professionalism and manner in which the work was conducted. The Tenant actually interfered with the construction by pouring water onto the dry wall to test whether the work had been completed properly.
- The Tenant reported the mold problem and the Landlord started the remediation work right away. JM pointed to e-mail evidence showing that the Landlord dealt with the Tenant's concern about the mold problems in an expeditious manner.
- The Tenant had not provided complete evidence in relation to her loss of earnings. JM submitted that the 'Earnings History' document only shows what the Tenant earned and does not detail the amount of days that were taken off and exactly when, details which would have been reasonably expected to be made available for such a claim. In addition, for the month of August which the Tenant claimed she lost earnings, the document shows that she earned a higher amount compared to other months.
- The Tenant was never forced to stay at home while the construction work was taking place, instead the Landlord's agent tried to inform the Tenant by email as much as possible when the workers were going to be in attendance at the property as she chose to be there while the work was taking place.
- The Tenant was never forced to leave the tenancy. The Landlord offered to end the fixed term tenancy and the Tenant moved out of her own volition and therefore the Landlord should not be held responsible for cleaning costs and loss of possessions after this time. In addition, the Tenant failed to provide receipts for the possessions she apparently gave away. JM submitted that the Tenant could have put these items into storage.
- The Tenant left the tenancy because of financial hardship as she could no longer afford to pay the rent and not because she was forced to leave due to the mold problems.
- Not all of the basement suite was off limits to the Tenant and her son, there were other areas in the basement and second level where the Tenant and her son

could have slept and therefore the photograph showing a tent pitched in the living area on the second floor does not prove that the Tenants slept there for the duration of the remediation work.

- The Tenant failed to provide documents such as payment receipts and contracts relating to her income from the international students and therefore the amount claimed in this respect is arbitrary and baseless.
- The Tenant had failed to show exactly how the Landlord was responsible for her loss of quiet enjoyment and failed to provide evidence relating to this.
- The Landlord incurred a monetary loss for cleaning the rental suite after the Tenant had vacated the property. This included removal of junk items and making repairs. JM referred to invoices provided by the Landlord for these costs.
- The Tenant's claim is flawed and most of the items claimed are based on arbitrary amounts with little evidence to prove how the amounts were determined.

The Tenant testified that the contractors had not fixed the foundation of the basement suite properly and in order to test and prove it, she turned on the garden tap from which the water then moved towards the basement walls. The Tenant pointed to photographs showing the water from the garden tap leaking into the walls and submitted that this showed that the work was not being done properly.

JM rebutted this and submitted that this was evidence of the Tenant interfering with the contractor's work when she poured water onto the walls. JM submitted that the photographs clearly show that work was on going and had not been completed and such proof could only be obtained and determined once the work had been completed.

The Tenant testified that during the month of August she was still paid for vacation time which she had to take during the remediation work. The Tenant also testified that she earned a lot more because she had to do overtime to make up for outstanding work.

The Tenant and JM both disagreed with each other's testimony on the condition of the house after the Tenant vacated the rental property each referring to photographs showing the state of the property at the end of the tenancy. JM submitted that the Landlord should not be responsible for the Tenant's cleaning and moving costs because the Landlord had to clean up after the Tenant had left. The Tenant testified that she left the property clean at the end of the tenancy.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the Act, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

Section 32(1) of the Act requires a Landlord to maintain a residential property in a state of repair that complies with the health, safety and housing standards required by law, and make it suitable for occupation.

In this case, the Tenant alerted the Landlord to the mold problem by email on June 25, 2013 and within 3 days the Landlord had procured and assigned a contractor to start the remediation work. As a result, I find that the Landlord acted in an expeditious manner in rectifying the mold issue as required by section 32(1) of the Act.

The Tenant failed to provide sufficient evidence to support an allegation that the Landlord was aware of the mold issue before the Tenant moved in and I find that the Tenant also failed to show that the Landlord was the cause of the mold issue or was negligent in her duties as a Landlord that led to the mold issue manifesting itself.

I find that the property was large enough that only a small portion of the property was affected and being repaired. However, I am sympathetic to the Tenant for having to live in a property where such remediation work was necessary and required to be carried out and I accept that there was some loss of enjoyment and loss of use of the property for which the Tenant is entitled to compensation as she was paying rent during the construction period but not receiving full use of the property.

In considering the amount to be awarded to the Tenant for this loss of use, I find that the Tenant's claim in this respect is exaggerated and it is more appropriate to award the Tenant a nominal amount of \$1,500.00 for the loss and use during the period of construction.

The Tenant submits that the contractor's did not complete the remediation work properly as evidenced by photographs showing the walls were still leaking water. However, I find that the photographs provided by the Tenant were taken during construction and therefore they have little evidentiary value. Furthermore, I find that the Tenant provided insufficient evidence for this hearing relating to industry standards for mold remediation work, how the contractors failed to follow such procedures, and subsequent expert reports **after** the construction showing the walls were still leaking.

I also find that the Tenant provided insufficient evidence to show that the Landlord forced her to be present during the remediation work; an email from the Landlord to the Tenant asking to let the contractors in on the weekend is not sufficient evidence that the Tenant was forced to be present during the work.

The Tenant relies on the fact that one of her stools was used by the contractors and that the contractors had not protected the floor adequately as evidence of her need to be present during the work. However, I find that the photographs alone do not show or link the construction workers using the Tenant's furniture. I also find that this would not have been a reasonable reason for a Tenant to take time off work as these issues should have been raised with the Landlord and the Landlord would have been responsible for dealing directly with the Tenant's concerns of workers using the Tenant's furniture and not protecting the floors.

In addition, I find that the Tenant had also not provided sufficient evidence to verify the exact loss of work earnings. The Tenant provided no supporting evidence as to the exact hours and days that she had taken off and records to indicate that she was away from work during the time periods claimed for.

The Tenant was also subletting the upstairs bedrooms on the third floor to international students of her own violation as part of a hobby and service that she provided. However, I find that the Landlord should not be held responsible for financial losses because of the nature and way in which a Tenant chooses to use their rental suite.

I accept JM's submission in relation to the medical costs which the Tenant seeks relief for her son's illness. The Tenant has failed to provide any medical evidence showing a link between the mold issues in the basement suite to her son's illnesses and neither did the Tenant provide sufficient evidence to verify the losses claimed for.

Based on the foregoing, I find that the Tenant has failed to provide sufficient evidence for medical expenses (\$6,750.00) and the time take off to be with the contractors (\$2,205.00).

In relation to the remainder of the Tenant's claim which relates to amounts claimed because the Tenant felt that she had to leave the tenancy early, I find that the Tenant provided insufficient evidence for these claims. In the email exchange between the Landlord and Tenant, regardless of the conditions stipulated by both parties, the Landlord proposed that the Tenant could leave either on September 1 or August 15, 2013.

I find that the Tenant did not provide compelling evidence that she had to leave on August 15, 2014 and I find that she left of her own volition. The Tenant could have left on September 1, 2013 which would then have given her sufficient time to clean the house and remove her belongings without spending money on professionals to do this as claimed by her. As I have determined that the Tenant left of her own accord, I find that the Landlord should not be held responsible for any subsequent loss that the Tenant claims that she incurred.

As a result, I dismiss the Tenant's claim for moving and cleaning costs (\$1,625.00), time take off for the move (\$2,450.00), loss of possessions (\$8,000.00) and lost revenue for the international students (\$42,750.00).

In concluding my analysis of the evidence provided, I find that the entirety of the Tenant's evidence considered together is no more compelling than the Landlord's evidence for the claim made. As a result, I find that the Tenant has failed to meet the burden of proof in the majority of her claim and therefore, I find that the Tenant is not entitled to the recovery of the filing fee for making the Application.

Conclusion

For the reasons set out above, I grant the Tenant a Monetary Order pursuant to section 67 of the Act in the amount of **\$1,500.00**. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Landlord fails to make the payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 22, 2014

Residential Tenancy Branch

