



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, O, ERP, RP, PSF, FF

Introduction

This is an application filed by the tenant for a monetary order for the cost of emergency repairs, for money owed or compensation for damage or loss, an order for the landlord to make emergency repairs for health or safety reasons, to make repairs to the unit, site or property, to provide services or facilities required by law and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

At the beginning of the hearing it was clarified with the tenant that there have been no emergency repairs paid for and that the tenant made this selection in error and wishes to withdraw it. As such no further action is required for this portion of the claim.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order for repairs?

Is the tenant entitled to an order for the landlord to provide services or facilities required by law?

Background and Evidence

This tenancy began on October 1, 2013 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$750.00 payable on the 1st of each month and a security deposit of \$375.00 was paid on October 1, 2013.

The tenant states that there are electrical, mold, water issues, fire hazards, no security and cockroaches in the rental unit. The tenant states that the landlord has refused to repair these problems making it not suitable for living. The tenant seeks an order for the landlord to comply with the Act by repairing these issues. The landlord disputes these claims stating that there are no issues with the rental unit. The landlord has provided 6 letters from other tenants who state that there are no issues with the rental property and that the landlord always dealt with any issues immediately upon being notified. The tenant has provided a copy of an Electrical Certificate of Inspection from the Safety Authority in Vernon. The report dated May 7, 2014 notes a failed inspection where, "water migration into electrical equipment" occurred and that non-compliance must be resolved by June 6, 2014. There is also a notation, "The owner is to ensure the integrity of the building electrical system by keeping it dry and performing required annual maintenance. An annual operating permit is required by the Safety Standards Act for the service of this building. Please make arrangements with a registered electrical contractor to obtain the operating permit." The landlord has stated in his direct testimony that the leak from the upper floor was fixed approximately 1 month prior to the hearing date. The landlord also states that the light fixed as shown in the tenants photographs was already replaced. The landlord states that he is disputing the content of the tenant's photographs as they are photographs of another location and not the tenant's rental space.

The tenant seeks a monetary claim of \$700.00 which consists of \$25.54 for recovery of photographic costs, \$12.21 for Canada Post Registered Mail costs, \$500.00 for future moving costs, \$200.00 for future furniture cleaning costs and \$1,500.00 for compensation equal to 2 months rent for living in an unhealthy environment. The landlord disputes these claims stating that the tenant has not provided any receipts/invoices for any expenses or proof that these damages exist.

Analysis

I find based upon the submitted evidence of the tenant that the tenant has established that an electric and water issue has been established. The tenant's copy of the Safety Inspection Report shows that the local Safety Authority has already ordered the landlord to comply with the Safety Act. I order that the landlord have a registered electrician attend to inspect and repair as per the Safety Authority Inspection Report.

I find that the tenant has failed to provide sufficient evidence to support a claim that there is an existing water and mold issue as these portions of the claim are being disputed by the landlord and no further supporting evidence was provided by the tenant.

The onus or burden of proof lies with the party who is making the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. As such, these portions of the application are dismissed.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation (photographs, \$25.54 and registered mail costs, \$12.21) to either party to a dispute. Accordingly, the tenant's claim for recovery of litigation costs are dismissed.

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.

The tenant has stated that the claims for \$500.00 is for future move-out costs, \$200.00 to clean furniture due to cockroaches and \$1,500.00 for compensation equal to 2 months rent for unhealthy living conditions. The landlord has disputed relying on letters of from other current tenants who state that there are no issues with the rental property and that they are all happy living there. I find that the tenant has failed to provide sufficient evidence to satisfy me of proof that there are actual damage to the tenant's furniture, as well as the fact that the tenant has not incurred any costs as she is currently still residing at the rental unit with no plans to move-out. The tenant has failed to provide proof of any actual amounts required for compensation stating that these costs were based upon her general experience with moving and cleaning. On this basis, the tenant's monetary claim is dismissed.

The tenant having been partially successful in her application is entitled recovery of the \$50.00 filing fee. As the tenancy is continuing, I order that the tenant may withhold \$50.00 from the next months rent one time in satisfaction of this claim.

Conclusion

The tenant's monetary claim is dismissed.

The landlord is ordered to have a registered electrician attend to inspect and repair as per the noted Safety Authority Inspection Report dated May 7, 2014.

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: June 4, 2014

Residential Tenancy Branch

