



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, RR, FF

Introduction

This is an application filed by the tenant for a monetary claim for money owed or compensation for damage or loss, an order for the landlord to make repairs to the unit, an order authorizing the tenant to reduce rent for repairs and recovery of the filing fee.

Both parties attended the hearing by conference call and gave evidence. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been properly served. The tenant has submitted photographs as evidence for which the landlord has acknowledged receiving. The landlord has submitted documentary evidence that the tenant states he did not receive. The landlord states that the evidence was sent via Canada Post Registered Mail on July 4, 2014 and has provided the Customer Receipt Tracking number in her direct testimony as confirmation. The landlord states that a search online shows that the package was received on July 4, 2014 and an attempted service was made on July 8, 2014 when a notice card was left and again a final notice card was left on July 17, 2014. The tenant states that he did not receive any notice cards. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant regarding the service of evidence. An online review on the Canada Post Website confirms the landlord's version. I accept that the tenant was properly served with the landlord's evidence in accordance with the Act and find that the documentary evidence shall be admitted for the hearing. The details of the landlord's evidence was described to the tenant during the hearing. As such, I find that both parties have been properly served with their submitted documentary evidence.

During the hearing, the landlord stated that they were awaiting the outcome of this hearing before beginning repairs, but agree to make all necessary repairs as soon as possible. The tenant states that this will satisfy him. As such, no further action is required.

During the hearing the tenant withdrew his claim for a reduction in rent as the landlord has agreed to make all necessary repairs as soon as possible. As such, no further action is required for this portion of the application.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?

Background and Evidence

The tenant states that there is mold in his bedroom for the last 6 months and that the landlord was notified in January of 2014. The tenant states that he had to wait 6 months before the landlord would respond to the tenants concerns. The tenant states that he has stopped using the bedroom as a health and safety concern for the last 6 months without any notification from the landlord. The tenant seeks a monetary claim for compensation for the loss of use for 6 months at \$400.00 per month for total of \$2,400.00.

The landlord disputes the tenant claims stating that on June 5, 2014 the contractor, Toro Aluminum was contacted to attend on June 10, 2014 for an inspection. The contractor attended inspected and reviewed the areas with issues. The landlord has submitted a letter from the contractor outlining their findings. The letter states that that upon first review these damages appear to be consistent with excessive humidity and condensation within the unit or that of a window being left open for an extended period in bad weather and not associated with a window leak. The landlord also states that prior to her taking over as agent an outside contractor was retained who attended and inspected the rental in early March 2014. The tenant's wife, N.K.M. confirms that a contractor attended and inspected the rental in early March 2014. The landlord states that she was advised that only a verbal report was given that there was no mold, but that moisture was staining the carpeting and causing some of the yellow staining in the areas shown in the tenants photographs. The landlord disputes this stating that she was given a verbal explanation that the moisture was most likely a condensation issue within the rental and that the tenants chose to suffer the loss of use without any definitive details that mold was the issue.

Analysis

The onus or burden of proof lies with the party who is making the claim. In this case it is the tenant. 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. I accept the undisputed evidence of the landlord over that of the tenant. The tenant did receive a response from the landlord as shown in the tenant's own direct testimony. A contractor attended and inspected the rental. Based upon the disputed testimony of both parties I prefer the evidence of the landlord over that of the tenant. The tenant chose to suffer the loss of use of a bedroom without any definitive details of a health concern. The tenant's monetary claim is dismissed for lack of sufficient evidence.

Conclusion

The tenant's monetary claim 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: July 18, 2014

Residential Tenancy Branch

