



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Winston Churchill Apartments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, an order to have the landlord make emergency repairs for health or safety reasons, and an order to have the landlord make repairs to the unit, site or property. Both parties were present at the hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing. Both parties confirmed that they had received each other's documentary evidence.

Issues to be Decided

Are the tenants' entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about June 1, 2012. Rent in the amount of \$2550.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1275.00.

The tenants gave the following testimony:

The tenants stated that they are seeking to have mold remediated from the office area of their suite and to have new engineered hard wood installed. The tenants stated that they are seeking \$291.49 for costs incurred due to this problem. The tenants stated that they noticed that the office flooring began to “buckle and rise” in January 2014. The tenants stated that they have informed the landlord several times during the past year to address the issue. The tenants stated that water was visibly “squirting” out from between the boards when you stepped on them.

The tenants stated that the area affected is eight inches wide and eight feet long. The tenants stated that the landlord has had roofers and plumbers come and inspect the problem but have been unable to resolve it. The tenants stated that the area has become smelly and moldy. The female tenant stated that the mold has made her sick since October 2014. The tenants stated that they are not asking for compensation for having to live with this problem for the last year but just want the floor replaced and the mold removed.

The landlord gave the following testimony:

The landlord stated that he is completely willing to replace the floor but only after he is able to find the cause of the moisture. The landlord stated that the tenants were exaggerating as to how much moisture is under the floor and that “it’s not that bad”. The landlord stated that a large portion of the roof of the tenants’ penthouse has been replaced. The landlord stated that there isn’t any pipes that near the problem area. The landlord stated that he wants to fix the problem before he spends the money to install the floor. The landlord stated that he has bleached the area and removed all mold.

Analysis

After hearing testimony for an hour on the first hearing date, both parties agreed to adjourn the matter to give the landlord an opportunity to further investigate the problem in hopes of rectifying it. On the second hearing date the parties confirmed that all

necessary repairs had been dealt with and were content the issue of the water ingress has been resolved along with the mold remediation. The parties are to be commended for working together on this problem and resolving it. Based on the above I dismiss the portion of the tenants' application in regards to repairs or emergency repairs.

The parties advised that they still required me to address the monetary portion of the claim as follows. 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 tenants are seeking \$150.00 for the cost of a restoration inspector, \$60.00 for moving costs, and \$31.49 for the cost of respirator. The tenants provided receipts for these claims. The tenant stated they hired an inspector to determine the cause of the buckling floor. The tenant stated that she had to incur costs of moving some items because of the ongoing floor issue and that she required a respirator due to the "heavy moldy smell in the office".

The landlord disputes each of these claims. The landlord stated that the inspector did not advise as to the cause of the moisture and therefore isn't helpful. The landlord stated that he moved much of the items from the tenants' office except those the tenant told him not too. The landlord stated the respirator is unnecessary and shouldn't be accepted as part of the tenants claim.

Based on the testimony and documentary evidence before me the tenants have failed to meet all four of the above grounds as required, specifically #1 & #2.

The tenants have not been successful in their application.

Conclusion

The tenants' application is dismissed in its entirety.

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: February 26, 2015

Residential Tenancy Branch

