



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, MNSD, MND, FF, MNDC, ERP, RP

Introduction

Both parties filed an application for dispute resolution. The landlord is seeking a monetary order for loss of revenue and for damage to the unit, site or property. The tenants are seeking a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation, or tenancy agreement, an order to make emergency repairs for health and safety reasons, and an order to have the landlord make repairs to the unit, site or property.

Both parties confirmed that they had exchanged all documentary evidence. I am satisfied that the parties duly served each other of their claims in accordance with Section 89 of the Act. 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.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act, regulation or tenancy agreement?

Background, Evidence and Analysis

The tenancy began on January 1, 2013 and ended on February 22, 2015. The tenants were obligated to pay \$1680.00 per month in rent in advance and at the outset of the tenancy the tenants paid \$840.00 security deposit.

I will first address the tenants' claims and my findings around each as follows.

Tenants First Claim – The tenants are seeking a 50 % rent reduction for the time frame of November 2014- February 2015 for an amount of \$3360.00. The tenant stated that the living room wall had become “soft and moist” from mold. The tenant stated that the landlord recognized what the issue was immediately but failed to rectify it. The tenant stated that the landlord did nothing after numerous requests to fix it.

The landlord disputes this claim. The landlord stated that a contractor had come in and inspected the unit. The landlord stated that there was “absolutely no mold and that the building is very well maintained”. The landlord submitted a report from a contractor that outlines recent work done on the exterior wall of the subject unit living room. In that report, the contractor states that they exposed the backside of the living room drywall and that there wasn’t any sign of mold or moisture that had spread into the living room.

When a party makes a claim for damage or loss **the burden of proof lies with the applicant to establish their claim**, in this case the tenant. 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 stated on numerous occasions that mold was present in the unit but did not provide sufficient evidence to support that allegation. The landlord stated that he had someone inspect the unit to the tenants’ satisfaction and that he didn’t hear about again until he issued a notice of rent increase. The landlord stated that he had a separate contractor come and inspect the wall in question; and found no mold or any moisture whatsoever. As noted above, the applicant who is the tenant in this claim must prove their claim. The tenant has failed to satisfy me on any of the four grounds and I must therefore dismiss this portion of their application.

Tenants Second Claim- The tenant is seeking \$4000.00 to replace a couch, \$400.00 for sleeping mats, \$100.00 for a hammock, and \$300.00 for cabinets. The tenant stated the couch was 20 years old but it was “solid made in Canada large sectional”. The tenant stated that she received it from her mother and that it was in excellent condition. The tenant stated that the couch became covered in mold due to the moisture in the

wall. The tenant stated that the other items also became covered in mold due to the moisture coming in from the living room wall and spreading through the floor. The tenant stated that other items were between 2-5 years old. The tenant stated that she has not replaced any of these items as of this date.

The landlord disputes this claim. The landlord stated that he was not provided an opportunity to see any of the damaged items. The landlord stated that he found that unusual as tenants would complain and want to show him what they allege is damage. The landlord stated that the couch was never placed against the wall but near the front windows of the unit. The landlord stated that it would be impossible for the couch to become covered in mold if it wasn't anywhere near the wall in question.

As noted in the first claim, the tenant has failed to satisfy all four grounds as required. In fact, the tenant has not satisfied me of any of the grounds required. The tenant has made allegations that she could not substantiate or provide sufficient documentation to support. Based on the above and on the balance of probabilities I dismiss this portion of the tenants' application.

The tenants were also seeking an order to have the landlord conduct repairs and to make emergency repairs. As the tenants have moved out and the tenancy is over, I need not make a finding in that regard and hereby dismiss that portion of the tenants' application.

The tenants have not been successful in their application.

I now address the landlords' claims and my findings as follows:

Landlords First Claim - The landlord is seeking \$2633.62 for painting the unit. The landlord stated that the unit was painted prior to the tenants moving in. The landlord stated that the tenants made so many holes in the walls from hanging shelves, TV's, pictures and cabinets. The landlord stated that he had never seen so many holes in a suite. The landlord submitted photos, a video and a receipt for this claim as well as a statement from the contractor who did the painting "about three years" ago.

The tenants dispute this claim. The tenants stated that the landlord did not conduct a condition inspection report at move in or move out so there is no way of knowing how much damage was there prior to their moving in. The tenant stated that the photos are not date stamped and that they could have been taken at any time.

After reviewing all the documentation and the hearing from both parties I find that the landlord has provided sufficient evidence to support his claim. In the tenants own testimony she acknowledged “we installed cabinets and storage bins and the T.V.”. Although the landlord did not conduct a condition inspection report he has provided the photos, the contractors statement of work conducted three years ago and a receipt for the recent work. Based on all of the above and on the balance of probabilities I find that the landlord is entitled to \$2663.62.

Landlords Second Claim- The landlord is seeking \$180.00 for polishing the hard wood floors and \$100.00 for suite cleaning. The landlord stated that the tenants left a lot of marks on the floor and that the unit was left dirty.

The tenants dispute this claim. The tenants’ stated that they had spent at least four hours cleaning the unit.

The landlord stated that he had cleaned the unit and polished the floors himself. When I asked the landlord how much time was required he was very vague and unclear as to the extent of the work and the time required. Based on the insufficient evidence before me I dismiss this portion of the landlords’ claim.

Landlords Third Claim- The landlord stated that he is seeking \$1900.00 for the loss of revenue for the month of March. The landlord stated that due to the poor condition the unit was left in by the tenants he was unable to rent the unit. The landlord stated that he was unable to start showing the unit until March 15, 2015.

The tenant disputes this claim. The tenant stated that she vacated on February 22, 2015 giving the landlord ample opportunity to conduct the work and minimize his loss.

The landlord acknowledged that the unit was empty on February 22, 2015. I find that the work required was not extreme in nature that would have required it to take place over 22 days; the time in which the tenant vacated until the time the landlord first advertised. The landlord could have reasonably conducted the work in a much shorter time frame and made attempts to mitigate his loss. In addition, the landlord advertised at \$1900.00, a large increase from the previous rate, one in which would also limit the ability of the landlord to rent the unit to an extent. For the above reasons I dismiss this portion of the landlord’s application.

The landlord is entitled to the recovery of the \$50.00 filing fee.

Conclusion

The landlord has established a claim for \$2713.62. I order that the landlord retain the deposit and interest of \$840.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1873.62. This order may be filed in the Small Claims

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: March 23, 2015

Residential Tenancy Branch

