



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF, O

Introduction

This hearing dealt with the tenant's application for a Monetary Order for the cost of emergency repairs; damage or loss under the Act, regulations or tenancy agreement; and, return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The landlord appeared at the hearing along with his lawyer and a witness. I excluded the witness until such time the witness was called to testify. The witness was not called to testify during the hearing and I have not named him as a participant on the cover page of this decision.

The landlord had sent a response and evidence to the Branch and to the tenant via registered mail on December 9, 2015 using the service address provided by the tenant on his Application. However, the registered mail sent to the tenant was returned to the landlord. The tenant confirmed that he had moved from the location indicated on his Application in late October 2015 and he did not provide the landlord or the Branch with an updated service address. I found that the landlord had served the tenant in a manner that complies with the Act and the reason the landlord's documentation was not received by the tenant was due to the tenant's failure to update his service address. I informed the tenant that I would accept the landlord's documentation into evidence but that it would be described to him during the hearing so that he could respond to it. As the hearing progressed it was unnecessary to refer to the landlord's documentary evidence as the tenant's application was dismissed for reasons provided further in this decision.

During the hearing, the tenant acknowledged that he had not provided the landlord with a forwarding address in writing prior to filing this application. Since a landlord is not required to take action with respect to a security deposit until after a tenant provides a forwarding address in writing, pursuant to section 38(1) of the Act, I found the tenant's application for return of the security deposit to be premature and I dismissed it with leave. The tenant orally provided a current mailing address for the landlord to use for purposes of taking action with respect to the security deposit. I have recorded the tenant's current mailing address on the cover page of this decision and the landlord was informed that he is considered to be in receipt of the tenant's forwarding address in writing upon receipt of this decision. The landlord is expected to use that address so as to take action with respect to the security deposit within 15 days of receiving the address. The landlord stated that he intends to refund the deposit to the tenant.

From the tenant's application and written submissions I noted that the tenant's claim to recover the cost of emergency repairs was not readily apparent. I read the definition of an emergency repair to the tenant, as provided under section 33 of the Act. Upon hearing the meaning of an emergency repair as defined in the Act the tenant confirmed that he had not made paid for a repair that meets the definition of an emergency repair. Therefore, I dismissed this portion of the tenant's claim summarily.

In light of the above, I informed the parties that I would hear the tenant's claim for compensation for damage or loss under the Act, regulations or tenancy agreement. The tenant began to make submissions concerning alleged breaches that were not identified when the tenant filed his application. I noted that the tenant had clearly indicated with his application that the dispute concerned mould in the rental unit. I informed the tenant that dispute resolution proceedings are based upon the principles of natural justice, meaning the respondent has a right to be notified of the charges against him in advance of the hearing so that the respondent has the opportunity to prepare a response or defence. Accordingly, I informed the tenant that I would limit his submissions to those relevant to mould in the rental unit and that any other breaches may be addressed under a separate application.

Issue(s) to be Decided

Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The one-year fixed term tenancy commenced February 1, 2015. The tenant paid a security deposit of \$450.00 and was required to pay rent of \$900.00 on the first day of every month. The tenant did not pay rent for August 2015 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant testified that he vacated the rental unit in mid-August 2015. The landlord recalled that he found the unit abandoned on or about August 12, 2015.

The tenant seeks monetary compensation totalling \$25,000.00. This sum was not allocated between the security deposit, emergency repairs, and losses associated to mould. Rather, the tenant provided a four page, single spaced type-written document listing amounts for various items including: \$3,000.00 for mismanagement of a cannabis business; \$1,000.00 for student loan resources wasted; \$5,600.00 for missed tutelage; moving and storage costs of varying amounts; and the cost of numerous household items that the tenant did not total but included things such as prescriptions, clothing; food; alcohol; vitamins, among other things not only for the months during the tenancy but the two months leading up to this tenancy.

The tenant submitted that he discovered mould in the bathroom in late March 2015 or early April 2015. The tenant testified that he notified the landlord of this via text messages and orally. The tenant included photographs of several text messages in his evidence package. I noted that none of the text messages before me indicated the tenant was complaining of mould or water in the bathroom. In any event, the tenant stated that the landlord attended the property and proceeded to apply putty over a small section of wall by the toilet and repaint the wall.

The tenant testified that he determined there was mould in the rental unit after he had a mould inspection performed by mould specialists. The tenant presented the mould inspection report prepared by the mould specialists for an inspection that took place on August 12, 2015 (herein referred to as the "mould report"). The tenant acknowledged that he did not seek a mould inspection until he was moving out. The tenant acknowledged that he did not share the mould report with the landlord until he served the landlord with evidence for this proceeding, after his tenancy ended. The tenant also acknowledged that he did not seek repair orders or other remedies during his tenancy by filing an Applicant for Dispute Resolution. The tenant explained that he was willing to live with the situation up until his tenancy came to an end in August 2015. The tenant also submitted that he was "forced" to live in the rental unit due to his personal circumstances.

The landlord testified that when he attended the rental unit during the tenancy he found that a portion of the wall in the bathroom was rotting. The landlord attributed this to the tenant not using a shower curtain or using shower curtain improperly and allowing water to splash on the wall and floor. The landlord testified that he removed the section of rotten wall and patched it and instructed the tenant to keep the wall from getting wet. The landlord did not receive another complaint concerning mould from the tenant. Rather, when the landlord found the rental unit abandoned in August 2015 he observed duct tape over the exhaust and heat vents. The landlord was of the position the tenant was trying to create an environment that would result in mould formation. The landlord also testified that the subsequent tenants have not made any complaints concerning mould.

The tenant denied placing duct tape over the heat vents but did acknowledge that he sealed up any “leaks” in the bathroom because he tries to make the bathroom to be steamy when he showers so that he can sweat more.

The mould report confirms the existence of fungus on the wall between the bathroom and living room and adjacent to the bathtub surround. Sections of drywall in the bathroom and the flooring was found to be saturated with moisture. The mould report indicates that these conditions are attributable to the escape of water, most likely from a plumbing stack; however, the report also indicates that “the source of moisture intrusion has yet to be confirmed.” The mould report indicates that the fungus should be professionally remediated. The mould report also indicates that the relative humidity in the rental unit was elevated and that extraction fans are to be used frequently and that the ambient temperature must not fall below 16 degrees

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 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.

The burden of proof is based on the balance of probabilities and in this case the tenant has the burden of proof. It is important to note that 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 upon the mould report submitted as evidence I accept that there was mould in the rental unit as of August 12, 2015 when the inspection was conducted. However, the presence of mould does not in itself entitle the tenant to compensation.

As provided in the mould report, the mould is the result of excessive moisture attributable to a water escape although the source of the water escape was not determined. Further, to remove excessive moisture the rental unit must be sufficiently vented and heated. In this case, I was provided opposing submissions as to the reason for excessive moisture in the rental unit and I find both reasons provided to be equally probable. Aside from an escape of water, the tenant also acknowledged that he would intentionally create a steamy environment in the bathroom by sealing up any "leaks" so that he would sweat more. This acknowledgement indicates to me that the tenant's actions caused or at least contributed to an overly moist environment in the bathroom.

Of further consideration is that the tenant acknowledged that he "was willing to live" with the situation. He did not make further complaints to the landlord about mould and he did not seek repair orders from the Residential Tenancy Branch during the tenancy. Rather, he apparently took no action to have the landlord further investigate the source of mould and make any necessary repairs. In fact, only after he was served with a Notice to End Tenancy and was preparing to move out did he take action to gather evidence concerning mould. I find the tenant's actions consistent with retaliatory behaviour, but more importantly, a failure to mitigate losses.

In light of the above, I find the tenant failed to prove that the mould was the result of the landlord's negligence or failure to make repairs; and, the tenant failed to demonstrate he took reasonable action to mitigate losses. Therefore, I find the tenant is not entitled to the compensation he is seeking and I dismiss his claim against the landlord.

Although I have dismissed the tenant's claim for compensation against the landlord, given the mould specialists made recommendations for mould remediation given the presence of fungus they discovered, the landlord would be well served to seriously consider those recommendations to ensure the rental unit meets health and safety requirements and is suitable for occupation by current and subsequent occupants of the rental unit. Having received a copy of the mould report, the landlord would be hard

pressed to argue that he is unaware of mould should mould be raised as an issue in the future.

Conclusion

The tenant's monetary claims against the landlord have been dismissed with the exception of his request for return of the security deposit which was dismissed with leave.

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: April 01, 2016

Residential Tenancy Branch