



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

This hearing convened as a result of the Tenant's Application for Dispute Resolution wherein the Tenant requested monetary compensation in the amount of \$5,000.00 from the Landlord representing return of all rent she paid during the tenancy and recovery of her moving costs.

Both parties appeared at the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The Tenant testified that the tenancy began October 1, 2015 and ended on February 29, 2016. Monthly rent was payable in the amount of \$850.00.

Introduced in evidence was a copy of the tenancy agreement confirming this was for a fixed one year term.

In the within action the Tenant seeks return of all rent paid in addition to moving costs in the amount \$750.00.

The Tenant testified that she agreed to rent the rental unit and signed off on the tenancy agreement prior to viewing the rental unit. The Tenant stated that she did not exercise sufficient due diligence in inspecting the rental unit prior to agreeing to move in.

The Tenant testified as to the following deficiencies:

- The fridge was broken, created ice, dripped and leaked and caused the Tenant to have to throw out food constantly. She also stated that the inside of the door did not have any shelving. She stated that when the freezer finally broke the fridge was replaced in November of 2015.
- The stove was broken in that the large burner did not work. She confirmed that the Landlord replaced the stove by November 2015.
- There wasn't a chain on the main door because the door had been kicked in. She stated that the chain was replaced in mid-November.
- The closet in the hallway did not have a door. She stated that the closet door was replaced in mid-November.
- The hallway closet had an exposed pipe because the sheetrock was cut out and the insulation was black, from what she believed was black mould. She stated that the hole was never patched over during the tenancy.
- There was previous leaking in the closet. She stated that the smell was unbelievable because of the mould smell.
- The humidity in the apartment was such that the window had to be left open.
- The Tenant stated that she could not sleep in the bedroom because of the smell of mould and mildew from the corner opposite of the window and had to sleep in the living room as of December 2015.
- The Tenant stated that when the management changed the only elevator stopped working and was not fixed for two weeks such that she had to walk up and down three flights of stairs for two weeks.

The Tenant confirmed that she lived in the rental unit and did not live anywhere else during the course of her tenancy.

Introduced in evidence was a handwritten letter from the Tenant to the Landlord dated February 15, 2016 wherein she gave two weeks-notice to the Landlord to vacate the rental unit.

The Tenant confirmed that the Landlord returned her security deposit at the end of the tenancy.

In conclusion, the Tenant reiterated that although by November 2015 the issues she had raised were taken care of, she should be entitled to return of all the rent paid as “it was a constant struggle to have stuff done and it was a bit much to have to do”. She also stated that the building was put up for sale shortly after she moved in and she would not have moved in had she known the building was up for sale.

C.L. testified on behalf of the Landlord. Also introduced in evidence were written submissions prepared by the Landlord’s legal counsel. C.L. testified that the contents of these submissions were true and that she was relying on them. I provide a summary of those submissions as follows:

- The Landlord at the beginning of the tenancy on October 1, 2015 was a different entity completely unrelated to the Landlord subject to the application filed by the Tenant.
- The Landlord named on the application took over ownership of the rental unit on December 7, 2015.
- On January 14, 2016 the Tenant reported a mouldy smell in the rental unit. The Landlord investigated this complaint within 24 hours and did not notice a smell as alleged by the Tenant.
- On January 28, 2016 the Tenant complained of mould problems. These were also promptly investigated with the result that no active signs of moisture were found.
- The Tenant gave only two weeks’ notice of her intention to vacate the rental unit which was insufficient and in violation of her fixed term tenancy which was to end on September 30, 2016.
- The Tenant declined to complete the Move out Condition Inspection and declined to provide a forwarding address to the Landlord.
- Despite the Tenant giving insufficient notice, breaking her fixed term tenancy and failing to provide a forwarding address, the Landlord returned her entire \$420.00 security deposit.
- The Tenant has failed to prove the Landlord has
- The Tenant’s complaints about required repairs do not give rise to compensation. There is no evidence of any kind of repair issue that was not taken care of in a timely manner.
- Many of the complaints relate to a time period in which the Landlord did not own the property and if the Tenant had a valid claim, which the Landlord disputes, it is with her previous Landlord.

- The Landlord investigated the Tenant's complaints of mould promptly and determined that there was no evidence that the mould was due to improper repair or maintenance.
- The existence of mould, by itself, does not automatically entitle the Tenant to compensation when there is no evidence that the mould medically harmed the Tenant and where there is no evidence that the Mould was caused by improper repair and maintenance mean that the rental unit is

C.L. stated that the company for which she is employed owns the building took over December 7, 2016. She stated that he was informed that after diligent investigation the previous Landlord determined there was no mould and no smell as alleged by the Tenant. C.L. further testified that despite having a fixed term tenancy, the Landlord accepted the Tenants' short notice to vacate the rental unit, and refunded her security deposit. In all the circumstances C.L. submitted that the Tenant's claim should be dismissed in its entirety.

Analysis

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- proof that the damage or loss exists;
- proof that the damage or loss occurred due to the actions or neglect of the responding party in violation of the Act or agreement;
- proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Based on evidence and testimony before me, the submissions of the parties and on a balance of probabilities I find as follows.

The Tenant seeks \$750.00 in moving costs. As noted during the hearing, moving costs are not recoverable under the *Residential Tenancy Act* as moving is an inevitable cost of renting as tenants are not guaranteed perpetual occupation. Accordingly, this component of her claim is dismissed.

The Tenant seeks return of all rent paid during her tenancy.

The evidence before me establishes that the Landlords promptly addressed the Tenant's complaints. The tenancy began October 1, 2015 and the Tenant confirms that the issues she raised were resolved by November 2015. Based on the issues raised, I find this to be a reasonable amount of time for resolution.

Further, I accept the evidence submitted by the Landlord that the Tenant's complaints regarding mould were promptly investigated and unsubstantiated. The Landlord's counsel appropriately notes that a Tenant must clean the mould in her rental unit as required by *Policy Guideline 1 – Landlord & Tenant – Responsibility for Residential Premises*.

In consideration of the above, I find that the Tenant has failed to prove she suffered a loss, and I further find that she has proved that this alleged damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act or agreement. For these reasons I dismiss her claim.

Conclusion

The Tenant failed to prove she suffered a loss and failed to prove proof that the alleged damage or loss occurred due to the actions or neglect of the Landlord in violation of the *Act* or agreement. The Tenant's 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: September 29, 2016

Residential Tenancy Branch