



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Amos Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDC

Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$2233.18.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Both parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

The parties agree that this tenancy began on May 1, 2015 and that the tenant vacated on May 15, 2016.

The parties also agree that the landlord returned the tenants full security deposit, and refunded the tenants May 2016 rent.

The applicant testified that she believes the landlords should be held liable for damages that resulted from a leak in the hot water tank of a rental unit, which caused excessive mold damage to her belongings, caused health issues for her child, and forced her to move out of the rental property.

The applicant further testified that she believes the landlord is negligent for having failed to do a proper inspection of the rental unit during the quarterly inspection which was held in March of 2016.

The applicant further testified that, during the inspection, the landlords did not inspect the small room where the hot water tank is held, and, had they done so, this excessive mold issue may not have developed.

The applicant further testified that she believes the mold must already have been growing back in March of 2016, as she finds it unlikely that such an excessive amount of mold could have grown between March 2016 and May 15, 2016.

The applicant is therefore requesting a monetary order to reimburse her for the damages and costs resulting from the mold issue and having to vacate the rental unit.

The landlord testified that they do quarterly inspections of the rental units, and this is to ensure that the tenants are keeping the rental units in good condition and also to attempt to keep on top of any repairs that may be needed.

The landlord testified that, the last quarterly inspection was done on March 22, 2016, and he believed that the hot water tank room was inspected at that time.

The landlord further testified that once the tenant informed him of the leak and the mold problem they acted promptly, getting a restoration company into deal with the issue and the restoration company found that it was a pinhole leak that would have been very hard for the person doing the quarterly inspection to have found.

The landlord therefore believes there was no negligence on the part of the landlords.

In response to the landlord's testimony the tenant testified that she was present during the inspection, which was done by the landlord's daughters, and she can say for sure that no one checked the hot water tank room.

The tenant further testified that she believes it's irrelevant whether or not it was a pinhole leak, because she thinks, had the landlord's checked a room, the large amount of mold would have been noticeable, as she does not believe that the excessive amount of mold in the rental unit could have grown in that short period, as she stated previously.

Analysis

It is my finding that the applicant is not met the burden of proving that her losses from the mold problem at the rental unit were a result of any negligence on the part of the landlords.

First of all, there is no requirement under the Residential Tenancy Act for the landlord to do quarterly inspections, and therefore, if the landlord chooses to do an inspection, but fails to find any damages at that time the landlord cannot be considered to be negligent.

Had the landlord found damage and failed to rectify the damage then the landlord could be considered negligent.

Secondly, it is my finding that the landlord acted promptly to deal with the leak in the hot water room once he was notified of the issue by the tenant, and therefore again there is no negligence on the part of the landlord.

The landlord cannot be held liable for damages unless the damages were caused by the willful or negligent actions of the landlord, and as that is not the case.

It is my decision therefore, that I will not allow the tenants claim against the landlord.

I am not sure if the tenant holds any occupant/tenants insurance, however if she does I would suggest she may want to file a claim with her insurance company to recoup her losses.

Conclusion

This application is dismissed in full without leave to reapply.

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: November 21, 2016

Residential Tenancy Branch