



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 138138 ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations and tenancy agreement, for emergency and general repairs to the unit, site or property and to recover the filing fee for this application.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by delivering the package to a secure room used by the Landlord for rent payments and other documents. The Landlord said he received the Tenant’s Hearing Package. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there a loss or damage to the Tenant and if so how much?
2. Is the Tenant entitled to compensation for loss or damage and if so how much?
3. Is the Landlord responsible to do emergency and general repairs to the unit, site or property?

Background and Evidence

This tenancy started on June 1, 2017 as a fixed term tenancy ending November 30, 2017. Rent is \$1,250.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$625.00 at the start of the tenancy. No move in condition inspection report was completed at the start of the tenancy.

The Tenant said he viewed the unit prior to move in when the previous tenant was still in the unit. After the Tenant moved into the unit the Tenant said he sent a list of 19 deficiency items in the unit to the Landlord to be repaired. The Tenant said he did not submit the list into evidence but some of the items are as follows: the kitchen cabinets were dirty/stinky and in need of repair, there was mold in the bathroom and kitchen, the smoke alarm was not working, some electrical outlets were not covered and the balcony door and window were not air tight. The Tenant continued to say that his wife spent 16 hours cleaning the unit because the unit was dirty when they moved in. The Tenant continued to say he messaged the Landlord many times

about the deficiencies, but the Landlord was very slow to respond to his requests. As a result the Tenant believes there is a potential health and safety risk because of the condition of the rental unit. Consequently the Tenant said he has made this application for compensation in the amount of \$10,000.00 for potential health and safety risks and \$400.00 for time spent cleaning the rental unit.

The Tenant said the cleaning claim is based on 16 hour of work by his wife at \$25.00 per hour for a total amount of \$400.00. The Tenant continued to say the \$10,000.00 claim is an amount that he thinks is the potential health and safety risks could cost him. The Tenant said there is no actual calculation of this amount it is just an amount he picked.

The Tenant continued to say after he made the application the Landlord sent a contractor to the unit to look at the repairs. The Tenant said the Landlord gave him a battery for the smoke alarm but he had to install the battery himself. The Tenant said the smoke alarm is now working. Further the contractor repaired the electrical outlets in November, 2017 and the balcony door and window were in repaired in September, 2017. The Tenant said that the kitchen cabinets were cleaned by the contractor but the cabinets should be replaced.

The Tenant continued to say there is mold in the bathroom but he has not had a mold company investigate the mold issue as of yet. The Tenant said he is concerned the mold may be a health risk.

The Tenant said because the Landlord does not appear to be interested in repairing these concerns in a timely manner the Tenant is concerned that he has a potential health and safety risk in this rental unit. The Tenant said he has no medical evidence to show that he has any health issues at this time. The Tenant provided 11 photographs of the deficiency items as supporting evidence to his claims.

The Landlord said the Tenant viewed the unit prior to renting it and he was told the building is old and the units have some issues so if the Tenant did not want to rent the unit it was ok with the Landlord. The Landlord continued to say he sent a contractor to the unit to repair the items the Tenant had listed in September, 2017. The Landlord confirmed the smoke alarm was repaired with a new battery, the balcony door and window were repaired to stop the draft, the electrical outlets were covered and the kitchen cabinet was cleaned but not replaced. The Landlord said the Tenant wants the kitchen cabinet replace but in his discussions with the Contractor the cabinet was still usable. The Landlord told the Tenant that he would get the Contractor to repair and paint the kitchen cabinet but he will not replace the cabinet. The Landlord said the Tenant and the Landlord do not agree on this point. It should be noted the Contractor was not called as a witness for either party.

The Landlord continued to say the Tenant's claim for \$10,000.00 is unjustifiable as the Tenant has not provided any evidence to support a health or safety issue. Further the Landlord said the unit was rented as is and he did not make any agreement to pay the Tenant or the Tenant's wife to clean the unit. The Landlord said the Tenant's claim for \$400.00 is unfounded.

The Landlord said this is a fixed term tenancy with a vacancy clause in the tenancy agreement for November 30, 2017 and the Landlord wants to end the tenancy as soon as possible.

The Tenant said he wants to continue the tenancy and the law has changed and the vacancy clause is no longer valid.

The Landlord said in closing he has fixed the items that the Tenant requested to be repaired except for the kitchen cabinet and they disagree on this item. The Landlord said he does not want to continue the tenancy and he believes the Tenant's claims are unjustified and unproven.

The Tenant said in closing the Landlord has not complied with the Act, there is safety and health issues in the unit and he believes his claims are justified even if he has not supplied supporting evidence to prove his claims.

Analysis

I have carefully reviewed the evidence submitted and the testimony given at the hearing. From the evidence both parties they agree the Tenant and the Landlord viewed the unit prior to the tenancy starting. The Tenant said the previous tenant had not moved out so the condition of the unit was undetermined and the Landlord said the unit was rented as is. The parties agreed that no move in condition inspection was completed at the start of the tenancy.

Section **23** of the Act says (1) the landlord and tenant together **must** inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day. This is the responsibility of the Landlord to establish the condition of the unit at the start of the tenancy. As the Landlord did not do a condition inspection report the Tenant did not have an opportunity to request the unit to be cleaned or repairs to be done at the start of the tenancy. Consequently, I find the Tenant has established grounds for a claim for cleaning the rental unit at the start of the tenancy. I accept the Tenant's wife spent 16 hours cleaning the unit and I award the Tenant 16 hours of work at \$25.00 per hour in the amount of \$400.00.

With regard to the Tenant's claim for \$10,000.00 for health and safety concerns which may potentially cause injury or damage to the Tenant, I find the Tenant has not support his claim with corroborative evidence. The Tenant has not showing any health issues as a result of the rental unit nor has the Tenant provide any prove of mold that is caused by the Landlord's building or maintenance of the building. Mold issues can be caused by either the landlord or the tenant and a mold company is needed to provide an assessment to prove the cause of the mold. This was not done so the alleged mold issue is not proven.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

I find the Tenant has not provided the evidence required to prove an actual loss has resulted because of a health or safety issue which would result in a claim of \$10,000.00. There is no medical evidence, no mold investigate, no monetary loss as in loss wages or medical costs and the Tenant has not justified the amount of \$10,000.00 except that he thought it was the right amount. Consequently, I dismiss without leave to reapply the Tenant's claim for potential health and safety claim in the amount of \$10,000.00.

With regard to the repair items it appears the only outstanding issue is the kitchen cabinets. The Tenant wants the cabinets replaced and the Landlord says the cabinets are usable. I have reviewed the photographs submitted by the Tenant and I accept the cabinets show age and wear and tear; therefore I order the parties to have an independent contractor agreed to by both parties inspect the cabinets and repair or replace the cabinets at the Landlord's expense. If the issue is not resolved by the independent contractor the parties are at leave to apply for compensation.

Further during the hearing there was a discussion of whether the fixed term vacancy clause in the fixed term tenancy agreement was still valid as a result of changes in the legislation. I have reviewed the legislation changes and the Tenant is correct in that the fixed term vacancy clause in this tenancy agreement is no longer valid as of October 26, 2017. The tenancy is now on a month to month basis.

As the Tenant has only been partially successful I order the Tenant to bear the cost of the filing fee of \$100.00 that he has already paid.

Conclusion

The Tenant is awarded \$400.00 for cleaning costs which I order to be deducted from the Tenant's next rent payment as a one time deduction. The Tenant's January, 2018 rent payment is adjusted from \$1,250.00 to \$850.00.

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: December 05, 2017

Residential Tenancy Branch