



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP FFT OLC PSF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to make submissions, call witnesses and cross-examine one another. The landlord was primarily represented by his agent.

As both parties were present I confirmed service of documents. As the parties testified that they were each in receipt of all of the respective materials, I find that the parties were each served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the tenants testified that they have vacated the rental unit and are solely seeking a monetary order returning their rent payment and security deposit for this tenancy.

Issue(s) to be Decided

Are the tenants entitled to a monetary award returning their rent payments and security deposit as claimed?

Background and Evidence

The parties agreed on the following facts. This one-year fixed-term tenancy began in July, 2017. The monthly rent was \$2,000.00. A security deposit of \$1,000.00 was paid at the start of the tenancy. The tenants pre-paid rent for six months at the start of the tenancy in the amount of \$12,000.00. The tenants moved out of the rental unit in November, 2017.

The parties gave comprehensive evidence regarding the circumstances leading up to the tenants vacating the rental unit. In summary; the tenants discovered mold in the rental unit which they contacted the landlord to repair. While the landlord took some steps to address the issue the tenants feel the steps were inadequate and the mold in the rental unit caused the tenant JM serious health risks. The parties made some attempts to discuss and resolve the issue but no solution was reached. The tenants moved out of the rental unit in November, 2017.

The tenants seek a monetary award of \$5,000.00, comprised of the rent for November, and December, 2017 of \$4,000.00 and recovery of the security deposit of \$1,000.00. The tenants submit that the landlord has failed to comply with the Act, regulations or tenancy agreement by providing a habitable rental unit and the money paid by the tenants should be repaid.

Analysis

Pursuant to Rule of Procedure 6.6 the onus is on the applicant, the person making the claim, to prove their claim on a balance of probabilities. Both parties provided numerous documents in support of their respective submissions. Based on the totality of the documentary evidence submitted and the testimonies of the parties I find that there is insufficient evidence to conclude that the rental unit was uninhabitable as a result of the mold infestation.

While I accept the undisputed evidence of the parties that mold was discovered in the rental unit and that the tenant has particular susceptibility due to medical conditions, I find that there is insufficient evidence to conclude that the rental unit could not be occupied. A copy of a Site Safety Assessment form completed by the third party restoration company was submitted into written evidence. The form shows that they

found mold in the rental unit but there is no indication on the form that its presence required the tenants to vacate the unit.

Even if I were to accept the tenants submission that the rental unit could not be occupied I find that there is insufficient evidence to conclude that the landlord was not taking reasonable efforts to restore the state of the rental unit. Based on the evidence of the parties I find that the landlord took reasonable steps in a reasonable period of time to address the issues identified by the tenants.

Section 45 (2) of the *Act* provides that a tenant may end a fixed term tenancy by giving the landlord notice effective on a date that is not earlier than the date specified in the tenancy agreement and is the day before the day in the month that rent is payable in the tenancy agreement. In this case, the parties gave evidence that the tenants gave notice and moved out of the rental unit in November, 2017. As such, I find that the tenants were obligated to pay the full rent for December, 2017.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

While I accept the tenants’ evidence that the tenant JM suffers from a medical condition that did not benefit from the discovery of the mold or the subsequent restoration work, I find that there is insufficient evidence to determine that there was a loss in the reduction of the tenancy. Based on the evidence I find that the deficiencies in the rental unit was minor and that the restoration work did not cause a reduction in the value of the rent. Consequently, I dismiss this portion of the tenants’ application.

The tenants seek to recover the security deposit paid for this tenancy under their claim for reduction in the value of rent, however I find that an application for recovery of security deposit must be made under the appropriate heading. Accordingly, I dismiss this portion of the tenants’ application.

Conclusion

The tenants' application is dismissed 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: January 12, 2018

Residential Tenancy Branch