



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 a Tenant's Application for Dispute Resolution wherein she sought monetary compensation from the Landlord in the amount of \$11,082.60.

Both parties called into the hearing which occurred by teleconference on March 1, 2018. Both parties 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 *Residential Tenancy Branch 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.

Preliminary Matter—Tenant's Claims

At the outset of the hearing the Tenant was informed that expenses relating to moving from the rental unit are not recoverable under the *Residential Tenancy Act* (the "Act") as tenancies do not guarantee perpetual occupation and therefore moving expenses are an inevitable expense associated with renting. Further, the Tenant was informed that pain and suffering claims are also not recoverable under the *Act*. The only amount which did not fall under these two general headings was the Tenant's claim for \$2,000.00 representing recovery of all rent paid during her tenancy.

Issue to be Decided

Is the Tenant entitled to monetary compensation from the Landlord equivalent to all rent paid during the tenancy?

Background and Evidence

The Tenant testified that she moved into the rental unit on November 1, 2015 and moved from the rental unit on February 29, 2016. Monthly rent was \$500.00.

In the within hearing, the Tenant claimed return of the rent paid November 2015, December 2015, January 2016 and February 2016 as she claimed that the presence of mold and fleas in the rental unit rendered the unit uninhabitable. The Tenant testified that she was away on holidays from December 28, 2015 to January 21, 2016 and therefore away from the rental unit.

The parties appeared before Arbitrator Lee on May 24, 2017. At that time the Tenant sought monetary compensation from the landlord in the amount of \$25,000.00. Her application was dismissed without leave to reapply as she failed to provide particulars of the amounts claimed. In that Decision, Arbitrator Lee also found that the Tenant failed to submit sufficient evidence to support her claim that the mold in the rental unit was toxic.

At the hearing before me, the Tenant submitted photos of the mold and condensation in her rental unit. She stated that it was only present on the metal windows and door frames and she had to clean the condensation up every couple of days which she found unacceptable. The Tenant further stated that there was a feeling of dampness in the rental unit. She also claimed that she tried to ventilate the apartment by leaving the windows open a bit and used the fan in the bathroom.

The Tenant confirmed that she did not retain the services of a mold expert to ascertain the origin of the mold, or the toxicity of the mold. She stated that she called a company by the name of P. and was informed that it would cost approximately \$500.00 to have them attend and she decided against hiring them because this was a lot of money for her.

The Tenant stated that she first noticed the mold on the front living room window approximately three to four weeks after she moved in. She claimed that the first time she brought her concerns to the Landlord's attention was on December 15, 2015 when she spoke to the manager, K.K. She confirmed that she did not make a written request that the Landlord deal with the mold.

K.K. then came to the rental unit on February 1, 2016 for an annual inspection. The Tenant stated that time she reiterated the mold issues and she showed him the mold. The Tenant stated that in response K.K. told her that she needed to address the water and mold by cleaning up the water and wiping the mold and if necessary, purchasing a product to spray on the mold to discourage growth.

The Tenant further confirmed that she did not ask the Landlord to attend the rental unit before she went on holidays and agreed it could wait until when she returned.

The Tenant stated that she had about 12 plants in the rental unit and as such asked a friend to tend to her plants while she was away. She confirmed that she did not ask her friend to clean up the moisture build up in the windows although she did talk to her about it and her friend refused to do any cleaning or wipe up the moisture or mold. The Tenant also claimed that the rental unit was so damp that her plants all died.

Introduced in evidence by the Tenant was a letter the Tenant wrote to the Landlord wherein the Tenant claimed she was coughing and sneezing, had eye irritation, itchy skin and light-headedness. During the hearing the Tenant confirmed that she did not see a doctor at the time she lived in the rental unit.

The Tenant confirmed that the majority of her claim relates to her concerns about the mold, but also because she believes her cat contracted fleas from the rental unit. She stated that she believed the fleas came from an older carpet which was left in the unit by the previous tenants. The Tenant claimed that her cat was an indoor cat and never went outside.

The Tenant testified that she first noticed fleas on her cat within about three weeks of living in the rental unit, approximately December 15, 2015. When she went on holidays her cat went to a friend's home who did not have pets from which her cat could have caught fleas.

In response to the Tenant's claims, the manager, K.K. testified as follows. He confirmed that he has been the manager of the rental building for three and a half years.

He stated that he does not remember the Tenant speaking to him in December of 2015 about any mold issues and believes that the Tenant informed him of the mold when he inspected the unit in February of 2016. He confirmed that he informed her that she needed to wipe up the condensation in the window as failing to do so was causing mold. He confirmed that all the other tenants wiped up their windows such that they did not have mold growth as seen in the subject rental unit. He confirmed that the mold was visible but that it was only on the window frames.

K.K. stated that the windows are less than 10 years old as the buildings were built just prior to the Olympics in 2010. He did, however confirm that the circulation in the buildings was poor and stated that they recently installed a heat recovery ventilation system to address this problem. He stated that the system was installed in the subject rental unit a month or two after her tenancy ended. He confirmed that humidity and condensation was an issue in other rental units, but the tenants clean up the water such that mold did not accumulate.

K.K. also testified that there was no problem with mold prior to the Tenant moving in nor have there been problems since her tenancy ended.

K.K. stated that there were no fleas in the rental unit prior to the tenancy beginning. He also claimed that the previous tenants asked the Tenant if she wanted the carpet and she agreed to have the carpet and paid to have it professionally cleaned. He stated that he spoke to the Tenant and offered to remove the carpet and she refused indicating she wanted to keep it.

K.K. stated that he was aware of a stray cat on the rental property. He said that it came into the office and was friendly with the renters. He further stated that he was not aware of the previous tenants allowing the stray cat into their rental unit as claimed by the Tenant and to his knowledge they did not have any pets. He also confirmed that the previous tenants and the new renters have not reported any flea issues.

Additionally, K.K. stated that no other renters have complained of having fleas.

In reply to the Landlord's submissions the Tenant stated that she did not ask for the carpet to remain in the rental unit.

Analysis

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

The full text of the *Residential Tenancy Act*, Regulation, and Residential Tenancy Policy Guidelines, can be accessed via the website: www.gov.bc.ca/landlordtenant.

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 her 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.

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.

Section 32 of the *Act* mandates the Tenant's and Landlord's obligations in respect of repairs to the rental unit and provides as follows:

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.

The Tenant claims return of all rent paid during her four month tenancy. She alleges that the rental unit was uninhabitable due to toxic black mold and fleas. At a previous hearing the Tenant was informed that she had insufficient evidence to prove the mold was toxic; at the hearing before me, she failed to submit any further evidence to confirm the mold was in fact toxic.

Mold and moisture occur in residential premises. *Residential Tenancy Branch Policy Guideline 1* provides that a tenant is responsible for cleaning the inside of windows and tracks during, and at the end of a tenancy, including removing mold. While the presence of dark coloured mold may be concerning for some tenants, not all mold is harmful. The Tenant bears the burden of proving the mold is toxic, and in this case I find she has failed to meet this burden.

In a previous Decision the Arbitrator found that the Tenant did not clean the windows of moisture and mold at the end of the tenancy and awarded the Landlord compensation for the related cleaning costs. The Tenant admitted in the hearing before me that the moisture and mold was not cleaned up while she was on holidays. I find that the Tenant has failed to honour her obligations pursuant to section 32 of the *Act*, and has failed to mitigate her loss as required by section 7.

I accept the Landlord's evidence that while the rental units had circulation issues, the other renters attended to removing moisture and mold as required. I further accept his evidence that the Tenant failed to do so as this is supported by the finding of Arbitrator Lee.

I find the Tenant has failed to meet the burden of proving that the Landlord breached their obligations under the *Act*. The Tenant conceded that she did not make a written request to the Landlord for services relating to the mold or fleas. It is the Tenant's responsibility to inform the Landlord of any issues in the rental unit as the Tenant is entitled to exclusive occupation. The Tenant further conceded that she did not ask the Landlord to address these issues while she was on holidays, such that if they were as problematic as she now claims, she failed to mitigate her losses by allowing the situation to continue while she was away.

I also find the Tenant has failed to prove that the mold and moisture issues rendered the rental unit uninhabitable such that she should recover all the rent paid. She failed to submit any evidence to support a finding that she was unable to reside in the unit at any time due to the mold. She did not seek medical attention for her claimed medical issues, nor did she receive any confirmation from her doctor that her symptoms were in fact related to her rental unit and in particular the presence of mold.

Further, the Tenant testified that the mold was only present on the window and door frames. This suggests the mold issue was minor. As well she continued to reside in the rental unit and store all of her items during her tenancy such that she derived some benefit from the tenancy. Notably, she was on holidays for a month during her four month tenancy, such that even if she could prove the rental unit was uninhabitable (which she has not), her claim would be discounted by the time she was away.

I find the Tenant has failed to prove she is entitled to monetary compensation from the Landlord due to the presence of mold in her rental unit.

I further find the Tenant has failed to prove that her cat's fleas were caused by some breach of the Landlord's obligations under the *Act*. The Tenant speculates that a rug left from previous occupants was infested with fleas, yet provides no evidence to support such a finding. As such I am unable to find that the Tenant's cat's fleas were caused by the rental unit, and in particular, the Landlord's actions or inaction. I am also unable, based on the evidence before me, to prefer the Tenant's testimony that she asked the Landlord to remove the rug.

Conclusion

The Tenant's claim is dismissed in its entirety.

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: March 29, 2018

Residential Tenancy Branch