



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 tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order compelling the landlord to conduct emergency repairs for health and safety reasons;
- an order for the landlord to comply with the Act, regulation or tenancy agreement;
- and order to have the landlord provide services or facilities as required; and
- authorization to recover the filing fee for its 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 sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. At the outset of the hearing the tenant advised that she had vacated the unit and submitted an amendment to her application seeking only a monetary order for compensation and the recovery of the filing fee. The landlord confirmed that they had received the tenants' amended application. In the result, I dismiss miss the tenants application save and except for the claim for monetary compensation pursuant to section 67 of the Act and the recovery of the filing fee pursuant to section 72 of the Act. The hearing proceeded and completed on that basis.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on November 15, 2016 and ended on February 4, 2018. The tenant testified that the monthly rent was \$1500.00. The tenant testified that she had went away on vacation on January 16, 2018 and when

she returned on January 31, 2018 she found the home covered in mould. The tenant testified that her two nightstands and bench were so badly covered in mould she had to throw them out and replace them. The tenant testified that she feels she is entitled to some sort of compensation for living in this unhealthy home and feels three months' rent is appropriate.

The tenant is seeking the following amounts

Two Nightstands	\$266.54
Bench	\$ 145.57
Three months rent compensation	\$4500.00
Filing fee	\$100.00
	\$
	\$
Total:	\$5012.11

The landlords' agent gave the following testimony. The agent testified that she adamantly disputes the tenant's entire claim. The agent testified that the tenant and her boyfriend lived in the unit for sixteen months and at no time did they advise them of any issues. The agent testified that the landlord had the issue dealt with immediately after being informed by the tenants' on February 1, 2018. The agent testified that the tenants vacated as this happened and feels that they caused the damage. The agent testified that the landlord has incurred an expense of over ten thousand dollars to remediate the damage.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that

they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant testified that she was away on vacation with her boyfriend for two weeks and that when they returned the unit was full of mould. The tenant has not been able to provide sufficient evidence to show that the landlord was negligent or reckless and that they were in contravention of the Act to cause this. In addition, the tenant has not been able to provide sufficient evidence to support the amount as claimed. As they are unable to meet all four of the factors above as noted under section 67, I must dismiss this application in its entirety.

The tenant has not been successful in her application.

Conclusion

The tenants' application is dismissed in its entirety 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: April 04, 2018

Residential Tenancy Branch