



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PINNACLE PARKS POULTRY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: RR MNDCT FFT

Introduction:

The tenants and a lawyer as representative for the landlord attended the hearing. The tenants gave sworn testimony but the lawyer said his intentions were not to give evidence but to make submissions relying on the landlord's documentary evidence and to cross examine the tenants. The parties agreed the tenants served their application by registered mail. I find that the landlord is served with the Application according to section 89 of the Act. The tenants said they received the landlord's evidence about 11 days prior to the hearing and questioned the timing. I find the landlord's evidence as respondent was served in time pursuant to s. 4.1 of the Residential Rules of Procedure. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 32, 33, 65 and 67 for a rent rebate/refund and damages suffered due to lack of maintenance by the landlord from July 2014 to May 2016 and for reimbursement for items destroyed due to lack of repair; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that they have suffered damage and loss due to act or neglect of the landlord? If so, to how much compensation have they proved entitlement? Are they entitled to recover the filing fee?

Background and Evidence:

The parties attended and were given opportunity to be heard, to present evidence and to make submissions. Both the landlord's documentary evidence and the tenants' evidence described this home as an old country home which needed lots of care and attention. It had previously been rented for 11 years to a single father with boys and he discontinued the gas and used portable electric heaters. The landlord said he rented the home at a reduced rental to the tenant with the understanding she would be

responsible for any cosmetic attention to the interior. The tenant agreed that she rented the home July 15, 2014 to June 30, 2016 at a rental of \$1000 a month while other houses were renting from \$1600 to \$2700 a month. She paid a security deposit of \$500 and she said it was refunded plus a discount on the last month's rent due to "mould" issues.

The tenant said they had continual problems with mould infecting the walls, ceilings and furniture. She read articles in newspapers and the internet and was concerned about the toxic effects of black mould. She had a daughter, spouse and new baby living there for a time and they all had health issues such as coughing and congestion from the mould. She submitted photographs to illustrate what she claimed was mould infection in walls and furniture and cupboards. She claims a refund of all her rent (\$22,500) plus \$1000 for the ruined furniture. When queried about a professional report on the mould, the tenants said they had some testing done, they were advised to move but they never got a copy of the report.

The landlord submitted that there were single pane aluminium windows in the home which collected condensation on them. They needed to be wiped frequently when he and his wife lived in the home. In addition, he said the tenants had two large fish tanks which contributed to the moisture content in the home. He said the tenant likely experienced some issues with mildew due to excessive humidity but there was no mould. He provided a letter from a professional contractor who said they completed work at the subject home in September 2016, after the tenant left. They cut and removed several portions of the walls to see if there was a black mold issue. They determined there was no sign of mould behind the walls, in the crawlspace or in the attic. Furthermore, he provided a copy of the lease which showed only two adults were to occupy the home and no children.

The landlord's lawyer submitted the tenant understood she was renting an old home and knew what was required for maintenance. The carpet was cleaned before she moved in and even replaced later (which the tenant confirmed). He submits the tenant has not met the onus of proving the landlord neglected to maintain the home and caused harm or loss to her. She made vague allegations of mould but there is no scientific evidence provided or medical evidence that she was harmed. He said there were old windows in the home which contributed to a humidity problem which was exaggerated by her two fish tanks. He submits the tenant is seeking extreme damages based on insufficient evidence of her allegations.

The tenant said the landlord called a contractor after she left to deal with the mould. They had to strip walls and clean continuously while there. They suffered with mould and should be reimbursed for the landlord's failure to deal with it.

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 67 of the *Act* does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the *Act*, the regulations or a tenancy agreement.

Section 32(1) of the *Act* states:

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.

Paragraph 32(1) (b) above is intended to take into account the fact that older units will not and are not expected to be of the same standard as a newly constructed unit and that the unit must only meet the standard of being suitable for occupation and comply with health, safety and housing standards required by law. For these reasons, older units tend to rent for much less than newer units. I note in this case the rental unit is described as an old house rented by the tenant knowing maintenance was required. The tenant stated the rent was much below market value; however the tenant is seeking compensation of \$22,500 as a refund of rent for the whole period they resided there. I

find the tenants' request excessive especially since her descriptions of 'mould' and work required to maintain the home did not preclude the tenants from occupying any part of the rental unit and the tenants have not demonstrated any significant damage or monetary loss. In fact, they had another family with baby join them in occupying the home during the rental period.

Furthermore, I find the tenants did not satisfy the onus of proving there was mould present in the house. I find their photographs illustrate some dirt and discolouration on windows, walls and furniture. I find these could just as likely be the result of mildew caused by humidity as the landlord states. The tenants provided no scientific or medical evidence to prove there was mould or that they were harmed. I find the landlord was not neglecting to respond to their concerns but he could not repair for mould which he believed was not present as he had no evidence of it. He did replace the carpet and suggested she get a dehumidifier which she did not and she continued to have two fish tanks which contributed to the humidity. I find her photographs showing renovations after she left do not illustrate the presence of mould; I find the report from the professional is persuasive that there was no mould found during these renovations. I find the landlord replacing the single pane aluminium windows with modern windows after she left likely reduced some condensation problems. However, I find the Act does not require a landlord to update an old house when it complies with housing and safety standards and is fit for occupation by a tenant. I find insufficient evidence that this house did not meet standards or that it was unfit for occupation.

Conclusion:

For the reasons stated above, I dismiss the application of the tenant in its entirety without leave to reapply. I find they are not entitled to recover the filing fee due to lack of success.

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: June 20, 2018

Residential Tenancy Branch