



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on October 5, 2018. The Tenants applied for the following remedies, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67.

The Landlord and the Tenants both attended the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the *Act*?

Background and Evidence

The Tenants stated that they are looking for \$35,000.00 in compensation because they occupied the rental unit for a long time and have long term health issues from the black mould in the house.

The Tenants stated that they lived in the rental unit from December 2000 until May 2016. The Tenants stated that there were multiple roof leaks and bathroom leaks over their tenancy, and there was water damage in the ceilings, windows and walls.

The Tenants provided photos of some of the areas of concern, including spots on the walls, the windows, and under the washing machine. During the hearing, the Tenants only loosely referred to their photos and mainly spoke about the different leaks and moisture problems they had over the years.

The Tenants stated that the windows were a big concern because there was always water collecting on the windows and eventually it started to turn black with mould. The Tenants stated that it seemed to get worse in the rain and they wanted the windows to be replaced. The Landlord stated that the Tenants kept blankets over the windows and sealed in the moist cold air, which simply made the problem worse. The Landlord stated that any window can have condensation, and the moisture that was present was not from leaking, but from the Tenants not allowing the proper air circulation.

The Tenants also stated that there were a couple of different roof leaks over the years, and there were water stains in the ceilings and walls. The Tenants stated that this contributed to mould growth. The Landlord stated that there was a roof leak but that he promptly fixed this issue when he was advised of it. The Landlord stated that he was always diligent about fixing problems over the years.

The Tenants stated that the shower had a leak that went on for quite a while, without anyone being able to fix it. The Tenants stated that eventually, they located the leak in the shower wall, and were able to resolve the matter. The Tenants stated that this led to mould growth in and around that leak, including below it. The Landlord acknowledged that there are some plumbing issues with the house, due to the type of pipes used in the construction of the house. However, he stated that whenever he was told of an issue, he fixed it immediately.

The Landlord questions why the Tenants stayed for so many years and never actually told him about their mould concerns while they lived there. The Landlord stated that the tenancy ended about 2 years ago, by way of a 2 Month Notice, and now the Tenants have filed this claim for the maximum amount possible.

The Tenants stated that there were several mould stains on the walls. Some pictures were provided by the Tenants. The Tenants stated that they could hear water dripping in the walls sometimes.

The Landlord stated that the first time the Tenants mentioned mould to him was on this application, and all of the moisture issues the Tenants are referring to are not that uncommon, especially the odd roof leak and the condensation on the windows. The Landlord stated that many of these issues happen to any house, and some leaks should be expected over a 16 year period.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. 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.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenants must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenants did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

After reviewing the totality of the evidence, and testimony before me, I am mindful that the Tenants are asking for a substantial amount of money and they have not provided

any monetary order worksheet, or any breakdown as to how and why they should be entitled to \$35,000.00. It appears there were some legitimate plumbing leaks over the duration of the tenancy. However, I am mindful that the Landlord attended to most of these issues in a timely manner.

After looking at the totality of the evidence before me, I find the evidence is not sufficient to demonstrate that there was mould present. I note most of the photos from the Tenants were blurry and inconclusive in terms whether or not mould was present. Further, even if the Tenants did prove there was mould present, there is no evidence to substantiate or demonstrate that this had an impact on their health or wellbeing. The Tenants stated they used to get colds regularly while they lived there but other than mentioning this briefly in the hearing, it is unclear what the impacts would have been for the Tenants. There is no medical evidence to substantiate any of their claims about the health impacts of the mould. Also, the Tenants have not demonstrated that they suffered any loss, let alone what the value of any loss would have been. Ultimately, the Tenants have failed to substantiate their claim and I find the Tenants have not provided sufficient evidence to meet the burden of proof. As such, their claim is dismissed in full, without leave to reapply.

Conclusion

The Tenants' application is dismissed, in full, 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: October 9, 2018

Residential Tenancy Branch