



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FF

Introduction

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. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation as she had to move as a result of the unit having a mouse infestation and landlord not providing any pest control; and
- to recover the filing fee for its application from the landlord, pursuant to section 72.

Issue to be Decided

Is the tenant entitled to compensation for loss or damages arising out of this tenancy? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The undisputed testimony from both parties is as follows. The tenancy began on May 1, 2018 and the tenant vacated on June 27, 2018. It was a fixed term tenancy for one year but after the tenant complaints about mice, the landlord agreed to sign a Mutual Agreement to End Tenancy on June 30, 2018. Rent was \$1800 a month and the tenant paid rent for May and June 2018. In addition, she paid a security deposit of \$900 which has been returned and a \$300 deposit for hydro and had the balance returned.

The tenant requests a refund of the rent she paid, \$3600, plus \$700 for her moving costs (receipt in evidence) because she said there was a mouse infestation. She said she was scared to hear the mice chewing the wood of the fireplace since the second week after move-in. The landlord said he removed the fireplace because the tenant said the mice were coming from that area. He never saw any mice inside the home but he put some traps around the outside. He noted this is a rural area with farmland around and mice are in the fields where there is corn and other items to eat. He said if mice came in, it was because the tenant left the door open for her dog to come in and

out and she had dog food and other food exposed and this may have attracted mice. He said his prior tenant of five years and his new tenant have made no complaints about mice being inside.

The tenant said her 33 yr. old son stayed with her while he was in town and he saw mice at the fireplace and evidence of them on the kitchen counters where they ate food and left poop all over. She agreed the landlord covered the fireplace but said there was a hole left. The landlord came back and fixed it but the hole came back again. She could not cook in the kitchen due to mouse poop all over and she was scared because of the chewing noise in the fireplace all the time. She said the home was dirty at move-in, she did not leave doors open, she bought ultrasound devices but it did not help and she had to go stay at a friend's house until she moved.

The landlord said the home was not dirty at move-in as the condition inspection report shows, he fulfilled his obligations by acting right away when the tenant complained of mice and agreed she could end her fixed term tenancy early when she was not satisfied. Although agreeing he could show the house to prospective new tenants, she was not cooperative so he suffered some rental loss. She also broke a screen to leave evidence inside. He notes she made inconsistent statements when she said her dog was good for mice and then later said he was afraid of mice. He believes her application should be dismissed as he did not fail to maintain the home and acted promptly on complaints.

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.

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.

I find the weight of the evidence is that the landlord did not violate the Act or tenancy agreement. I find that when the tenant complained of a mouse problem, the landlord acted promptly to close in the fireplace where the tenant said she heard the mice and also he put down some traps outside. I find it credible that there were mice outside as there was farmland nearby. Although the tenant provided photographs to illustrate chewed heads of corn and some mouse droppings inside the house, I find these do not illustrate that the landlord violated his duty to maintain the home under section 32 of the Act. I find the evidence is that he addressed the problem immediately by closing in the fireplace, returning to fix holes that the tenant said still remained and putting down traps outside the home. I find the tenant did not mitigate her losses by allowing the landlord time to further address the problem. I find his evidence credible that the previous tenants and the new tenants had no problems with mice.

Since I find insufficient evidence that the landlord violated the Act or tenancy agreement, I find he is not liable to compensate the tenant for any losses claimed. I dismiss the application of the tenant.

Conclusion

The tenants' application is dismissed in its entirety without recovery of 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: October 25, 2018

Residential Tenancy Branch