



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67.

The tenant testified that on February 21, 2018 she forwarded the tenant's application for dispute resolution hearing package via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service. The address used for service was the landlord's service address as provided on the tenancy agreement. The landlord testified that he did not receive the application. Section 90 of the *Act* deems a party served with documents five days after mailing even if the recipient does not pick up the mail.

Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application February 26, 2018, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on June 1, 2017 on a fixed term until May 31, 2018. Rent in the amount of \$1,000.00 was payable on the first of each month. The tenant remitted a security deposit in the amount of \$500.00 at the start of the tenancy, which the landlord has already returned to her. The tenant vacated the unit on February 25, 2018.

A previous Decision was rendered on January 9, 2018 regarding this tenancy. The file number has been included on the front page of this Decision for ease of reference. In the January 9, 2018 Decision, the Arbitrator ordered the landlord to make necessary repairs to the roof and to the ceiling inside the rental unit to stop a leak and any mold accumulation by February 15, 2018. In the Decision, the Arbitrator advised the parties that if the landlord failed to make the repairs, the tenant was at liberty to apply for monetary compensation for the landlord's failure to comply with the *Act*, the tenancy agreement and the repair order.

The tenant seeks \$4,500.00 in monetary compensation for the devaluation of her tenancy and breach of the January 9, 2018 order. The tenant has calculated a \$500.00 devaluation for each month of her fixed term tenancy commencing September 2017 when the leak first started and was reported.

The landlord testified that he had workers tend to the roof on at least two occasions, but admittedly it was not repaired by February 15, 2018.

Analysis

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 this case, the onus is on the tenant to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Section 32 of the *Act* establishes that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant seeks compensation in the amount of \$4,500.00 for the water leak and accumulation of mold.

In this case, I find that as a result of the breach of the landlord's obligation to provide a rental unit that complies with section 32 of the *Act*, the value of the tenancy agreement was reduced.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past or future rent by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

There is no dispute that the unit was affected by the leak and mold. Based on the oral testimony of the parties I find it reasonable that the tenant could not adequately use this area without concern for her health.

I accept that the leak devalued the tenancy and in turn caused the tenant a loss. I find the tenant attempted to mitigate her loss by promptly reporting the leak and in the absence of a repair, vacating the unit. The calculation of damages itself is not a precise science and cannot be accurately reduced to a calculation. With consideration of the seriousness of the leak, the duration of the loss (six months), and the tenant's effort to mitigate, I value the diminishment of the tenancy as 40%. I find that the tenancy was devalued from September 2017 until February 2018. The tenant is entitled to compensation in the amount of \$2,400.00. I consider this amount reasonable given the impact that the leak had on the tenant.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$2,400.00.

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: September 18, 2018

Residential Tenancy Branch