



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) for monetary compensation for damages and for the recovery of the filing fee paid for this application.

The initial hearing was scheduled for September 24, 2018 and was adjourned to be reconvened on January 4, 2019. As the Tenant had not served the Landlord with his evidence package at the time of the initial hearing, he was provided with the option to continue the hearing without his evidence or to adjourn to provide time for the evidence package to be served. The parties agreed to an adjournment and the hearing was reconvened on January 4, 2019.

At the initial hearing the Tenant and a witness for the Tenant were present, as well as an agent for the Landlord. At the reconvened hearing, the Tenant was present along with a different agent for the Landlord (the “Landlord”).

At the outset of the reconvened hearing, the Tenant stated that he had not served his evidence package to the Landlord and the Landlord confirmed that the package was not received. The Tenant confirmed that he had received the Landlord’s evidence package.

As the Tenant did not serve his evidence to the Landlord as required in the *Residential Tenancy Branch Rules of Procedure*, the parties were informed that the Tenant’s evidence was not accepted and would not be included in this decision. The decision will be based on the verbal testimony of both parties, along with the Landlord’s documentary evidence.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

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

Is the Tenant entitled to monetary compensation?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Tenant was unsure of the exact details of the tenancy but stated that it started around August 2012. The Landlord stated that the tenancy began on December 1, 2012. A tenancy agreement submitted into evidence by the Landlord states the tenancy start date as August 1, 2013. The Tenant stated that the tenancy ended on February 10, 2018.

The parties agreed that monthly rent at the end of the tenancy was approximately \$978.07. They also agreed that the Tenant paid a security deposit at the outset of the tenancy which has since been returned to him.

The Tenant provided testimony that he went away for two weeks in January 2018. When he returned, he noticed some mould in his rental unit in the corner of the living room. He stated that this was the first time he had noticed mould in the rental unit and that it was not a lot of mould at first.

The Tenant stated that he contacted the 24-hour phone line for the Landlord and was told to call back during business hours. He testified that he continued to try to contact the Landlord but only heard back after emailing the head office.

The Tenant testified that someone came out to inspect the rental unit and he stayed at his girlfriend's place during this time. The Tenant stated that the mould spread quickly

and there was a terrible smell in the rental unit as well. The Tenant stated that as the mould issue was not being dealt with in a timely manner and it was spreading throughout the unit and onto his belongings, he ended his tenancy and moved out on February 10, 2018. The Tenant stated that the Landlord did not begin to deal with the mould until after he moved out.

The Tenant referenced an email in the Landlord's evidence package in which an agent for the Landlord advised him that his items had been cleaned when they had not been.

The Tenant stated that as his belonging were covered in mould, he left them at the rental unit as he did not want the mould to be brought to a new home. He stated that the Landlord had told him the items were being cleaned, but that they had not been which gave him no choice but to leave the items behind.

The Tenant has claimed a total of \$7,508.43 for the cost of replacing his belongings which includes furniture and electronics. He stated that he looked up the cost of purchasing these items new and took off approximately 70% to account for the items not being new.

The Landlord stated that the mould was due to a water leak that had occurred in the rental building. They confirmed the leak was not due to the actions of the Tenant. The Landlord also stated that the mould did not spread as quickly as the Tenant had claimed and that the mould was not on his electronics or other items. The Landlord submitted that the mould was confined to the walls of the rental unit.

The Landlord stated that the issue with the mould was resolved in a timely manner, but the Tenant had already abandoned the rental unit and left his belongings behind. As such, they placed the items into storage. The Landlord stated that they did not contact the Tenant regarding the items as they were waiting to find out the outcome of this hearing. The Landlord stated that the items in storage are free from mould and ready to be picked up by the Tenant.

The Landlord submitted into evidence a letter dated January 31st to the Tenant in which they state they will cover hotel costs and costs of food during the time the repairs are being completed. The letter also states that they will accept the Tenant ending his tenancy on February 10, 2018 as long as he submits this in writing. The letter states that rent will not be charged for February 2018.

A second letter from the Landlord dated February 1, 2018 states that as the Tenant is not staying at a hotel, they may cover some costs of rent for the Tenant's girlfriend, where he was staying. The letter also states that the abatement company is confident that the personal belongings of the Tenant can be cleaned. If any items were not able to be cleaned, the letter states that replacement costs would be reassessed.

A letter dated February 8, 2018 from a mould remediation company states that the Tenant's belongings were bagged and cleaned as required and suggested that fabric items be laundered.

The Landlord also submitted into evidence a series of email communication between themselves and the Tenant. In an email from the Tenant dated February 10, 2018, he states that he entered the unit that morning and it was clear that his items had not been isolated or cleaned and that he was not able to remove the items from the rental unit for concern over mould contamination. The email further states that the Landlord may dispose of the items left behind.

Analysis

The Tenant has claimed a total of \$7,508.43 as compensation for items lost due to mould. As stated by rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, the onus to prove a claim, on a balance of probabilities, is on the party making the claim.

I also refer to Section 7 of the *Act* which states the following:

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

While the Landlord agreed the mould in the rental unit was caused by a leak in the building and through no fault of the Tenant, the parties were not in agreement as to any damage to the Tenant's belongings.

However, the Landlord stated that they have the Tenant's belongings in storage and that they are free from mould and ready to be picked up. Although the Landlord's email evidence indicates that the items were not cleaned properly at the end of the tenancy, leading the Tenant to leave the items behind, as a significant amount of time has passed since then, the items may have since been cleaned or it may have been confirmed that there was no mould present on the items.

Although the Tenant stated there was mould present on the items in February 2018, there does not seem to have been an attempt by the Tenant to view or retrieve the items since then to confirm whether there is mould present. As such, I find that the Tenant did not take reasonable steps to mitigate any potential loss as stated in Section 7(2) of the *Act*.

I do not have sufficient evidence before me to determine that the items were not able to be removed from the rental unit due to the presence of mould. As such, I find that the Tenant did not meet the burden of proof to establish that he is owed compensation and that reasonable steps were taken to minimize any potential loss.

Accordingly, I decline to award any compensation to the Tenant. Instead, I recommend that the Tenant and Landlord discuss a viewing of the items and their possible return to the Tenant. As the Tenant was not successful in his application, I decline to award the recovery of the filing fee.

Conclusion

The Application for Dispute Resolution is dismissed, 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: January 09, 2019

Residential Tenancy Branch