



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on March 11, 2019 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation;
- an order that the Landlord comply with the Act, regulation, or Tenancy Agreement; and
- the return of the filing fee

The Tenant attended the hearing along with his legal advocate I.C.. The Landlord also attended the hearing and was accompanied by his Agent K.S. All in attendance provided affirmed testimony at the start of the hearing.

The Tenant testified that he served his Application and documentary evidence package to the Landlord by registered mail on March 15, 2019. The Landlord confirmed receipt. The Landlord testified that he served the Tenant with his documentary evidence in person on April 25, 2019. The Tenant confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to an order that the Landlord comply with the *Act*, regulation, or Tenancy Agreement, pursuant to Section 67 of the *Act*?
3. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 15, 2016. Rent in the amount of \$800.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 which the Landlord continues to hold. Neither party submitted a copy of the tenancy agreement.

The Tenant is seeking monetary compensation in the amount of \$1,920.00 which represents the return of 60 percent of his rent over a four month period. The Tenant has also claimed that the Landlord be ordered to comply with the *Act*. The Tenant stated that his claims relate to three main issues which have occurred during his tenancy.

The Tenant stated that in mid-October 2018 he began to experience an increase in temperature in his rental unit. The Tenant stated that he occupies the basement suite in the house and that there is a rental unit above him. According to the Tenant, the occupants in the suite above have manual control of the heating system which impacts the temperature in his rental unit. The Tenant stated that the temperature in his rental unit has reached up to 35 degrees Celsius most nights.

As a result, the Tenant stated that he lost sleep and that he and his dog became sick as a result. The Tenant stated that he tried opening windows in his suite which did not seem to help. The Tenant stated that he notified the Landlord about this issue throughout November 2018. The Tenant stated that on December 31, 2018 he decided to plug the vents with towels and shirts to prevent the hot air from entering his suite which seems to have resolved the issue. The Tenant submitted a copy of the text message exchange between the parties in support.

The Landlord stated that once he learned about the temperature control issue, he made arrangements to have a maintenance worker attend the rental unit to inspect. The Landlord stated that the maintenance worker attended the rental unit on three separate occasions between November 12 and December 1, 2018 and found no issues with the thermostat or the furnace. The Landlord stated that the furnace had been replaced in 2017 and that the Landlord decided to also replace the thermostat to see if that would solve the Tenant's concerns. The Landlord stated that the temperature had been set for 18 degrees Celsius and that the upstairs tenants had no issues with the heat.

Furthermore, the Landlord indicated that the heating bill was thirty percent lower than the bill from the previous year, which would indicate that the heating consumption has decreased. The Landlord submitted a written statement from the maintenance worker as well as a heating bill in support.

The Tenant has also indicated that the furnace makes a lot of noise when it is running, as is located directly behind his main living space in the rental unit. The Tenant stated that he decided to install insulation around the furnace as a result which has resolved the noise issue.

Lastly, the Tenant stated that on November 22, 2018 there was a leak which originated from the upstairs rental unit, which impacted the Tenant's rental unit. The Tenant indicated that he suspects that the bathtub upstairs had overflowed which caused the walls in his rental unit to become saturated with water. The Tenant stated that there was brown stuff coming from the baseboards, and there was a foul smell for a few days following the leak.

The Landlord stated that the maintenance worker attended the rental unit on November 22, 2018 at which point it was determined that the fridge had leaked some water upstairs which had gone down into the Tenant's rental unit. The maintenance worker discovered that the Tenant had made a hole in the ceiling to conduct exploratory work. The Landlord submitted a written statement from the maintenance worker in support. The Landlord stated that there was nothing to repair as it appeared to be an isolated incident in which the upstairs freezer had defrosted, causing water to accumulate and leak down into the basement. The Landlord stated that the maintenance worker suggested that over time the walls will dry and that there is no further action which could be taken.

The Tenant stated that he was able to fix the water leak by taping a pipe. Both parties agreed that there were no further issues with water leaking since.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. 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 what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

In this case, the Tenant has claimed for \$1,920.00 in monetary compensation as well as for an order that the Landlord comply with the *Act*. The Tenant has outlined three main areas of concern;

In relation to the Tenant's claim that the temperature was too high in his rental unit, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord has breached the *Act*. I accept that the Tenant notified that Landlord about the heating issue and find that the Landlord took immediate action to have the furnace looked at. The Landlord provided sufficient evidence to demonstrate that the maintenance worker attended on several occasions and did not find any issues with the furnace. The Tenant testified that he has blocked the vents, which prevents the hot air from entering his rental unit, resolving the issue.

The Tenant also claimed that the furnace was too loud when running. The Tenant stated that he managed to put insulation around the furnace which solved the issue. I find that the Landlord has not breached the *Act* as a result of the furnace being loud and I am satisfied that the issue has since been resolved.

Lastly, the Tenant claimed that the leak from the upstairs impacted his walls in the rental unit as well caused a foul smell for a few days. I find that there is insufficient evidence before me to indicate that the Landlord caused the leak. I am satisfied that the Landlord took immediate action to try and resolve the cause of the leak and that the parties agreed that there have been no leaks since. I find that the Tenant has provided insufficient evidence to demonstrate that he has suffered a loss as a result of the leak and has not provided evidence of value of his loss.

In light of the above, I dismiss the Tenant claim for monetary compensation relating to damage and loss, without leave to reapply.

I further find that the Landlord has not breached the Act; therefore, I dismiss the Tenant's claim for an order that the Landlord comply with the Act, regulation, or tenancy agreement, without leave to reapply.

As the Tenant was not successful with the Application, I find that the Tenant is not entitled to the return of the filing fee.

Conclusion

The Tenant has provided insufficient evidence to support his claims. As such, I dismiss the Tenant's Application 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: May 15, 2019

Residential Tenancy Branch