Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   **ERP LRE MNDCT**

Introduction

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

- An order for emergency repairs pursuant to section 33;
- An order to restrict the landlord's right to enter the rental unit pursuant to section 70; and
- A monetary award for damage and loss pursuant to section 67.

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.

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application and materials. Based on the evidence I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the Act.

At the outset of the hearing the tenant confirmed this tenancy has ended and withdrew all but the monetary award portion of their application.

Issue(s) to be Decided

Are the tenants entitled to a monetary award?

Background and Evidence

The parties agree on the following facts. This tenancy began in January 2019 and ended May 31, 2019. The monthly rent was $1,300.00 payable by the first of each month. A security deposit of $650.00 was paid at the start of the tenancy and is still held by the landlord. The tenants have not provided a forwarding address to the landlord as of the date of the hearing.

The tenant seeks a monetary award of $4,550.00, the equivalent of 3 month's rent and the return of the security deposit for this tenancy. The tenant submits that the rental unit contained mold. The tenant submitted into documentary evidence photographs of the suite and communication between the parties.

Analysis

In accordance with Rule of Procedure 6.6 the onus is on the party making the claim to prove their case on a balance of probabilities.

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 order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find there to be insufficient evidence in support of the tenant's claim. A handful of photographs showing some discoloration in a building does not establish the existence of mold. Furthermore, even if there were mold the tenant has failed to establish that there was any damage or loss or that it stems from the action or negligence of the landlord. I find that both individually and cumulatively the tenants have failed to meet their evidentiary burden. I find the tenant's application to be spurious and without merit. Consequently, I dismiss the tenant's application.

As the tenants have not provided a forwarding address, I find that there is no obligation on the landlord to return the security deposit. If the tenant provides a forwarding address in a manner set out in the Act, then the landlord would be obligated to either

return the security deposit in full or file an application for authorization to retain the deposit. Until the tenant provides a forwarding address I find that the landlord's obligation has not started and there is no basis for a monetary award for the return of the deposit.

Conclusion

The tenants' application is dismissed in its entirety 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: June 20, 2019

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Residential Tenancy Branch