



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. There were no issues raised with respect to service of the application and evidence on file.

Issues

Is the tenant entitled to monetary compensation?

Background and Evidence

The tenancy began in August 2015 and ended on April 30, 2019. The lease was renewed on an annual basis. The monthly rent as per the last renewal starting July 1, 2018 was \$10,209.00 per month.

The tenant is claiming loss of use and quiet enjoyment totalling \$34,840.00 for various issues over the duration of the entire tenancy. The tenant claims there was a leak in the media room on September 25, 2018 which left the media room unusable for a 7 month period until the end of the tenancy. The tenant claims he unplugged all his electronic equipment to prevent water damage and put them in storage for the remainder of the lease. The tenant also claims he suffered a loss of use of adjacent room due to a slight lingering order from the water leak.

The tenant is claiming loss of use of \$35/month for a garage area where the landlord stored hazardous items. The tenant submits various requests were made to the landlord to remove these items to no avail.

The tenant is claiming loss of use at \$15/month for the in-house vacuum system. The tenant submits that a number of the vacuum outlets were installed upside down causing the system to be inoperable. The tenant submits he had to tape the faulty outlets shut to allow the system to operate at a reduced capacity.

The tenant claims there were persistent leaks from the balconies and is requesting a 4% reimbursement of the rent paid for the duration of the tenancy. The tenant claims he suffered a loss of enjoyment by constantly having to attend to the leaks. The tenant submits all incident were recorded on text message but did not submit and text message correspondence in support.

Lastly, the tenant is claiming \$300.00 for loss of enjoyment of two walls which the landlord agreed to paint at the start of the tenancy but did not do so.

The landlord submits the leak in the media room occurred due to a crack in the back patio foundation. The landlord submits the leak was acted upon immediately and completely fixed by October 12, 2018. The landlord submits they heard no issue from the tenant after this time. The landlord argues there was only cosmetic damage from the water to some baseboard and cabinets in the media room. The landlord submits the tenant had full use of the room after the leak was fixed and could have moved his electronic equipment back. The landlord agrees that the tenant suffered a loss of use of the media room for the 18 days it took to correct the issue and agrees to reimburse the tenant \$248.97 based upon the square footage, rent payable and days of loss.

The landlord the items left in the garage are did not impact and parking or storage for the triple garage. The landlord submits the tenant never asked the landlord to remove these items.

The landlord submits the vacuum system was fully functional and if anything was just a minor convenience. The landlord submits it was a mistake in the initial installation and correcting the upside down outlets would require re-piping of the entire system.

The landlord submits the tenant has not submitted any evidence with respect to the alleged numerous leaks. The landlord denies there were numerous leaks and submits they only attended to the rental unit a handful of time over the duration of the tenancy to

check and correct any issues reported by the tenant. The landlord submits immediate action was taken every time they were contacted by the tenant.

The landlord acknowledges that at the time of the move-in inspection there were two walls which required re-painting. The landlord submits this job was missed.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 67 of the Act, 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.

Residential Tenancy Policy Guideline #16 "Compensation for Damage or Loss" provides the following guidance:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

With respect to the media room leak, I find the tenant has failed to establish that the media room was not usable from the date of the incident until the end of the tenancy. The tenant has not proven why he could not move his electronic equipment back into the media room after the leak was fixed on October 12, 2018. The tenant has also failed to establish that he suffered a loss of use of adjacent rooms due to a slight lingering smell. I accept the landlord's calculation for the actual loss suffered by the tenant for the 18-day period and award \$248.97.

The tenant failed to demonstrate that he repeatedly asked the landlord to remove items from the garage and that he suffered a loss as claimed due to these items being stored in the garage. The tenant could also have mitigated any losses by removing the items himself if the landlord was ignoring his repeated requests rather than now requesting loss of use over the duration of the four-year tenancy. This claim is dismissed.

The tenant failed to show that the vacuum system was inoperable during the duration of the tenancy. I find that if anything it was a minor inconvenience. The tenant also did not mitigate losses and could have filed an application for a rent reduction or an order for repairs at any time throughout the duration of the tenancy. This claim is dismissed.

The tenant has failed to show any evidence of persistent leaks. This claim is dismissed.

The tenant has failed to show how he suffered any loss for the two walls not being painted or that he made any further requests to the landlord to complete this work as agreed. This claim is dismissed.

As the tenant was for the most part not successful in this application, the tenant's request for reimbursement of the filing fee is dismissed.

In summary, the tenant is awarded a total of \$248.97.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$248.97. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 22, 2019