



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC, FFT

Introduction

On January 22, 2020, the Tenant made an Application for Dispute Resolution seeking an Order to comply pursuant to Sections 62 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

On February 21, 2020, the Tenant made an Amendment to his Application seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*.

The Tenant attended the hearing. The Landlord attended hearing as well, with Y.C. attending as an agent for the Landlord. All parties provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing and evidence package by registered mail on or around January 25, 2020 and the Landlord acknowledged receiving this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served this package.

The Tenant advised that he served the Landlord with his Amendment by registered mail on or around February 21, 2020 and the Landlord acknowledged receiving this package. Based on this undisputed testimony, I am satisfied that the Landlord was served this Amendment.

Y.C. advised that the Landlord’s evidence was served to the Tenant by registered mail on March 5, 2020 and the Tenant confirmed that he received this evidence. As the Landlord’s evidence was served in compliance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties agreed that the second Applicant named on the Application was not a tenant but was simply an occupant of the Tenant. As such, this person was removed from the Application as he has no relationship with the Landlord under the *Act*.

As well, the Tenant advised that his request for an Order to comply with the *Act* was already addressed by the Landlord. As a result, the only matter he was seeking remedy for was the monetary compensation.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 1, 2018. Rent was established at \$1,730.00 per month, due on the first day of each month. A security deposit was also paid; however, the parties were uncertain of the actual amount.

The Tenant advised that he was seeking compensation in the amount of **\$2,939.79** for the cost of items that were damaged due to exposure to mold. He stated that he did not have any issues with mold until September 23, 2019 where mold was discovered to be growing in the bedroom closets and storage rooms. He removed his items and reported this to Y.C. She had a technician service the dehumidifier in the storage closet on September 27, 2019. He stated that the service manual for the dehumidifier noted that it should be vacuumed periodically, and he contacted the company that manufactures the appliance. He was told that the vents should be cleaned a couple of times per year. He stated that the Landlord has not cleaned this, nor was he advised that he should be cleaning it. Based on the major dust particles in this appliance, it is his position that this has not been cleaned by the Landlord in a significant amount of time. He has not noticed any mold growth since the servicing of the dehumidifier.

After this service, the Tenant requested that the Landlord have an environmental assessment conducted and the Landlord hired a company to assess the rental unit on October 15, 2019. He stated that the ensuing Report (the "Report") indicated that the rental unit was "slightly above normal" in humidity. This Report suggested that the bathroom and stove top fans should be utilized, that the dehumidifier should be running

constantly, and that space should be left between furniture and walls to ensure proper airflow. The Tenant stated that this was occurring already. He also advised that the Landlord offered to provide another dehumidifier for his use.

It is his position that the development of mold was due to the Landlord's negligence as this appliance was not serviced by the Landlord, pursuant to Section 32 of the *Act*. He submitted documentary evidence to support his position and he referenced a spreadsheet that outlined his requested compensation for items that were not salvageable. The items on this list that showed no depreciated value were items that were in brand new condition and the other items that indicated depreciation were just estimates. He stated that he did not have any proof of when any of these items were purchased or how much he paid for them originally.

Y.C. advised that she was informed by the Tenant of a mold issue and she immediately hired a technician to service this appliance. She stated that this appliance was not a dehumidifier, nor was it an exhaust fan, but something in between and that not many technicians can actually service it. She submitted that prior to this incident, she would have a heating technician come periodically for maintenance and this appliance would be tested from the outside vent only to check airflow. She stated that it was never suggested to her by any technician that the appliance needed to be opened and cleaned if the airflow was sufficient. She did not even know that there was a vent on this appliance that could be cleaned.

She acknowledged that the Tenant requested that an environmental assessment be conducted, and she hired a company on October 15, 2019. In reading this Report, it is her position that the elevated level of humidity is still present after this appliance was cleaned, so the excess moisture is due to the Tenant's negligence. She stated that the Tenant is not complying with the recommendations of the Report by utilizing the fans sufficiently. She advised that she even offered the Tenant an additional dehumidifier; however, the Tenant declined this offer. She stated that the Landlord took immediate steps to address this problem when notified by the Tenant and the continued humidity issue is due to the Tenant's behaviours. She stated that she advised the Tenant that this appliance should be running non-stop and she noted that the Tenant did not provide any evidence to support his claims for compensation.

The Tenant acknowledged that he was informed by the Landlord to keep this appliance running all the time and that he should not place items near it; however, he was not advised that he should clean it periodically. He stated that he keeps his bathroom fan running for 15 minutes after showers and that he uses the stove top fan when cooking. He did acknowledge that he does not run the bathroom fan for eight hours a day as per the recommendations in the assessment Report.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* outlines the Landlord's and Tenant's obligations to repair and maintain the rental unit.

Section 67 of the *Act* outlines that compensation may be awarded resulting from non-compliance or a breach of the *Act*.

With respect to the Tenant's claims for damages, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Tenant's claim of \$2,939.79 for the cost of replacement of his personal items, I have reviewed the Tenant's spreadsheet. As per the hearing, the Tenant was advised that as his occupant was not a tenant under the *Act*, he had no relationship with the Landlord. As this occupant has no rights or obligations under the tenancy agreement, any losses suffered by him would be a civil matter between him and the Tenant. Consequently, I have dismissed this portion of the Tenant's claims and will be only considering his request for **\$1,611.95**.

While the crux of the Tenant's claims centres around his belief that because this appliance was not serviced regularly, this led to insufficient humidity control in the rental unit, I find it important to reiterate that the burden of proof is on the Applicant to substantiate his claims. Although the Tenant suggests that the Report's "recommendations for mold control does not require a behavioural change" by him, the Report indicated that there was a "slightly high" level of humidity detected still and that one of the recommendations to mitigate the humidity issue is for the Tenant to run his bathroom fan for eight hours per day. The Tenant acknowledged that he had only been running the bathroom fan for 15 minutes per day. While the Tenant speculated that the lack of maintenance of this appliance was the sole reason for the elevated humidity, as the appliance had been serviced, as the Report after this servicing noted that there was still a elevated level of humidity, and as the Tenant confirmed that he had not been running the bathroom fan as per the recommendations, it appears more likely than not that the Tenant's behaviours may have been the cause of the elevated humidity in the rental unit. As such, other than his suggestion of a causal relationship, I do not find that the Tenant has provided sufficient evidence to support his claim. I also find it important to note that if it was the Tenant's belief that the elevated humidity level was not due to

his negligence, it is not clear to me why he declined the Landlord's offer of an extra dehumidifier.

As I am not satisfied that the Tenant has substantiated his claims, I dismiss this request for compensation in its entirety. As the Tenant was not successful in these claims, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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: March 31, 2020

Residential Tenancy Branch