



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RP, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to complete regular repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord owner ("landlord"), the landlord's agent, and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that his agent had permission to represent the owner at this hearing. This hearing lasted approximately 51 minutes.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

Both parties agreed to settle the repairs portion of the tenant's application, except they were unable to settle the tenant's monetary claim for \$23,220.00, so I made a decision regarding the tenant's monetary claim only.

Settlement of Repairs Issue

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of the tenant's dispute.

Both parties agreed to the following final and binding settlement of a portion of the tenant's dispute:

1. The landlord agreed, at his own cost, to have a licensed, certified professional inspect and repair the mold issues inside the rental unit by April 30, 2020;
 - a. The landlord agreed to notify the above professional to provide a business card to the tenant in order to prove the professional's qualifications, so that the tenant can research these qualifications further, if she requires;
2. The landlord agreed, at his own cost, to have a licensed, certified pest control professional clean the rat urine and feces at the rental unit and to conduct a further inspection and treatments, if recommended by the professional, by April 30, 2020;
3. The tenant agreed to provide access to the rental unit for the above work to be completed and wishes to be present and can do so safely within the recommended health guidelines for the COVID-19 pandemic.

These particulars comprise a full and final settlement of a portion of the dispute for both parties, except for the tenant's monetary claim. Both parties understood and agreed to the above terms, free of any duress or coercion. These terms are legal, final, binding and enforceable, which settles a portion of this dispute, except for the tenant's monetary claim.

The tenant applied for a monetary claim for \$23,220.00. I made a decision regarding the tenant's monetary application because the parties were unable to reach a settlement on that claim. Below are my findings.

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2018. Monthly rent in the current amount of \$2,150.00 is payable on the first day of each month. A security deposit of \$1,075.00 and a pet damage deposit of \$1,300.00 were paid by the tenant and the landlord continues to retain both deposits. Both parties signed two written tenancy agreements. The tenant continues to reside in the rental unit.

The tenant seeks a monetary order of \$23,220.00 plus the \$100.00 application filing fee. The tenant said that she is seeking half a month's rent since she moved into the rental unit. She maintained that the landlord has neglected the crawl space under the house, claiming it was "not that bad." She claimed that she had no heat from August to January. She said that she had an "outrageous" hydro bill from "cranking" her heat, due to no insulation on the flooring and because the landlord told her to "dry the moldy wall." She said that she has a headache from the smell in the house, due to the mold smell released when she turns on the furnace. She explained that her "peace and enjoyment" was affected, she developed asthma when she never had it before, she is on two inhalers for asthma, she has a rash on her face since January, and her doctor told her the rental unit is making her sick and to leave. She said that it has affected her mentally and physically.

The tenant testified that she told the landlord about her health concerns since September 2018, but she has been "pushed aside because the landlord doesn't live there." She claimed that her roommate vacated the rental unit, she was "stuck with everything," she cannot move because she has a disability and works part-time, and she did not make an earlier application at the RTB because she was trying to work out the repairs with the landlord. The tenant confirmed that she is uncomfortable with the landlord's agent, the landlord fired him earlier for not doing repairs, the landlord only brought him on to deal with this RTB application, and the agent was not allowed to communicate with her.

The landlord disputes the tenant's monetary application. The landlord's agent stated that the house was renovated and "near-new" when the tenant moved in. He said that there was a new roof, kitchen, bathroom, doors, and fixtures. He said that every time the tenant asked for repairs, they were addressed by the landlord who went "over and above." He claimed that the landlord sent pest control to the rental unit four times to complete treatments and they are required to check monthly on the problem, but have not done so since March 2020, due to the COVID-19 pandemic. He pointed to invoices and receipts for repair work, a mold report, and the pest control reports. He maintained that the tenant signed a second tenancy agreement, for a tenancy commencing on September 1, 2019, after living in the rental unit for one year, when she had the option to leave but she voluntarily stayed. He confirmed that the landlord paid compensation to the tenant for the increased hydro bill until the heat problem was addressed. The tenant agreed that she received \$400.00 in compensation from the landlord for this heat issue.

Analysis of Tenant's Monetary Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$23,220.00, without leave to reapply. I find that the tenant was unable to justify the \$23,220.00 amount being claimed. I find that the tenant failed all four parts of the above test. The landlord disputed the tenant's claims.

The tenant did not go through her documentary evidence during the hearing. She stated that she submitted evidence of her medical conditions but did not review these documents during the hearing or point to any specific portions. The tenant spoke for most of the hearing time, as compared to the landlord's agent. The tenant spent most

of the hearing time discussing how the landlord's agent was fired by the landlord, rehired, and she did not want to deal with him.

Conversely, the landlord pointed to invoices and reports, to show the landlord's responses to the tenant's complaints of pest and repair issues. I find that the landlord reasonably dealt with the tenant's complaints of rats and mold in a timely and reasonable manner, in accordance with section 32 of the *Act*.

The tenant did not indicate why she chose half a month's rent as compensation for her claims. I find that the tenant received \$400.00 compensation from the landlord for the heat issue, as she chose to settle this matter with the landlord privately outside of the RTB hearing process. I also find that the tenant did not file a claim at the RTB for repairs or compensation for over 1.5 years after she said it arose, in September 2018. I note that the tenant voluntarily signed a new one-year tenancy agreement with the landlord in September 2019, after having already lived in the rental unit for one year, despite claiming about continuous and rampant issues with rats, mold, heat and her health since September 2018.

As the tenant was unsuccessful in her application, except where the landlord agreed to do repairs and pest control, I find that she is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord, at his own cost, to have a licensed, certified professional inspect and repair the mold issues inside the rental unit by April 30, 2020.

I order the landlord to notify the above professional to provide a business card to the tenant in order to prove their qualifications.

I order the landlord, at his own cost, to have a licensed, certified pest control professional clean the rat urine and feces at the rental unit and to conduct a further inspection and treatments, if recommended by the professional, by April 30, 2020.

I order the tenant to provide access to the rental unit for the above work to be completed safely within the recommended health guidelines for the COVID-19 pandemic.

The above repair and access orders are subject to the Ministerial Order M089 issued March 30, 2020, pursuant to the State of Emergency declared on March 18, 2020.

The remainder of the tenant's application 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: April 03, 2020

Residential Tenancy Branch