



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT MNDCT

Introduction

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

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

AF represented the landlord in this hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

As the parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on November 2, 2019, and ended on November 6, 2019. Monthly rent was set at \$1,300.00, payable on the first of every month.

The tenant is seeking the following monetary orders:

Item	Amount
Hotel Costs	\$2,500.00
Reimbursement of November 2019 rent	1,300.00
Dog Walking	200.00
Total Monetary Order Requested	\$4,000.00

The tenant testified that she had to move out early as the home was uninhabitable. The tenant testified that she had lung cancer, and could not be subject to any mould or mildew. The tenant testified that she had noticed a smell, but the landlord assured her that the smell was from the old house and paint.

The tenant testified that the landlord had informed her that the home had been previously tested, and confirmed that no issues were found. The tenant moved out as she felt sick, and decided she could not stay for health reasons. As a result of the early end of this tenancy, the tenant had to find a pet friendly hotel. In addition, the tenant had to pay the employees to walk her dog. The tenant is also asking reimbursement of her November 2019 rent.

The landlord testified that in 2017 a previous tenant did express concern about possible mould, and the landlord tested the home. The landlord testified that the tests results showed no mould, and that the smell was due to the age of the building.

The landlord testified that after the tenant expressed concern about possible mould and mildew, the landlord was going to obtain further test results, but the tenant had moved out before this could be done. The landlord subsequently sold the house on November 22, 2019.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter " tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I have reviewed and considered all relevant evidence and testimony presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

As stated above, the tenant applicant has the burden of proof in supporting their claim for monetary compensation. Although the tenant testified that she felt ill, I find that the tenant failed to provide sufficient evidence that her malaise was due to issues with the home. The tenant did not provide any expert testimony or test results to support her claims that the home was uninhabitable, or contained mould or mildew. As stated above, the burden of proof is on the applicant to support their claim.

Although I sympathize with the tenant, I find that the landlord had met their obligations under the *Act*, tenancy agreement, and as required by law. I find that the tenant moved out, and ended the tenancy, before the landlord had an opportunity to address the matter, or without filing an application for dispute resolution. I am not satisfied that the landlord had failed to disclose any relevant issues to the tenant before the agreement was made between the parties. I find the tenant made the decision to end this tenancy, and that any losses associated with the end of this tenancy were due to the tenant's choices, and not due to the landlord's failure to comply with the *Act* or tenancy agreement.

On this basis, I dismiss the tenant's entire application for monetary compensation without leave to reapply.

As the filing fee is normally awarded to the successful party after a hearing, I dismiss the tenant's application for recovery of the filing fee without leave to reapply.

Conclusion

I dismiss the tenant's entire 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 6, 2020

Residential Tenancy Branch