



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT FFT

Introduction

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

- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials. Based on the testimonies I find the parties each were served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

Is the tenant entitled to recover their filing fee from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on September 1, 2019 and ended October 31, 2019. Monthly rent was \$1,700.00 payable on the first of each month.

There was a previous hearing under the file number on the first page of this decision pertaining to the landlord's application for unpaid rent, damages and loss and authorization to retain the deposit for this tenancy. A decision was issued in the landlord's favour on March 27, 2020. The tenant filed the present application on March 31, 2020.

The tenant submits that during the course of the tenancy they did not have quiet enjoyment of the rental unit. The tenant's complaints include sounds from the other portion of the rental building being heard inside the suite, appearance of rodents in the rental suite, and insufficient heating. The tenant provides lengthy written submissions about their complaints and have submitted evidence by way of the text message conversations with the landlord

The landlord disputes the tenant's claim in its entirety.

Analysis

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.

Pursuant to Residential tenancy Rule of Procedure 6.6 the applicant is the one who bears the onus to prove their case on a balance of probabilities. Based on the totality of the evidence I find that the tenant has not established any portion of their claim on a balance of probabilities.

I find the tenant's submissions to consist primarily of subjective complaints with the documentary evidence merely confirming that the tenants made complaints to the landlords. I find little evidence that supports that there is any merit to the underlying complaints or that the conditions of the rental unit were as described by the tenant. I find the tenant's complaints about noise to be unreasonable. In a multi-unit building some ambient sounds are to be expected. There is little evidence that the sounds were at a frequency or level that it can be considered an unreasonable disturbance.

I find little evidence to support the tenant's claim for a monetary award. I find the tenant's submissions to have little air of reality and not be supported in the documentary evidence. I find that the tenant's complaints regarding the lack of heat in the rental unit to be unsubstantiated in the materials and the evidence merely demonstrates that it was one of a number of ongoing complaints made by the tenant. I find that the mere fact that there were complaints to be little evidence that there was any deficiency or breach that would give rise to a basis for a claim.

I find that on a whole the tenant has not met their evidentiary onus for any portion of their claim and consequently dismiss the application in its entirety without leave to reapply.

Conclusion

The 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: July 16, 2020

Residential Tenancy Branch