



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 an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for endangerment to her health, for the return of rent, for the replacement of a mattress and couch, for the cost of an air purifier and for the recovery of the filing fee. The tenant's total claim for these items is \$29,410.87.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The parties represented themselves. The tenant's father attended the hearing.

As both parties were in attendance, I confirmed service of documents. The landlord stated that on May 26, 2020, he had served his evidence by email to the tenant and filed proof of having done so. Under the order of the Director dated March 18, 2020, a document could be served by email for the duration of the state of emergency due to the Pandemic. The date that the landlord served his evidence by email fell during the period that service by email was permitted.

The landlord confirmed receipt of the tenant's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the tenant entitled to her monetary claim for compensation?

Background and Evidence

The background facts are generally undisputed. The tenancy started on May 01, 2019 for a fixed term of one year with an end date of April 30, 2020. On January 26, 2020, the tenant gave the landlord notice, to end the tenancy effective January 30, 2020. The tenancy ended on January 31, 2020.

On February 14, 2020, the landlord made application for a monetary order to recover the loss of income he incurred due to the tenant's breach of the fixed term tenancy agreement. The matter was heard on May 22, 2020 and in a decision dated the same day, the Arbitrator awarded the landlord a monetary order in the amount \$5,800.00 for the loss of income he suffered. On May 05, 2020, the tenant made her own application for a monetary order for compensation which was scheduled to be heard today – August 14, 2020.

The tenant testified that sometime in September 2019, she started noticing some "smells" in the apartment and started feeling unwell. She stated that the smell made her nauseous, and that she was getting headaches. The tenant stated that she did not seek medical attention.

The tenant stated that shortly after she informed the landlord about the problem on December 27, 2019, the landlord visited the rental unit the next day but could not detect any smells. The landlord stated that he did not hear from the tenant about any problems with offensive smells inside the unit, after December 28, 2019.

The landlord stated that the next time he heard from the tenant was on January 26, 2020, when she served the landlord with a notice to end tenancy effective January 30, 2020. The landlord stated that he met the tenant on January 30, 2020 to do the move out inspection and during the inspection they chatted briefly about the "smells".

The tenant testified that she has sensitivities to mould and filed a doctor's note to support her testimony. The note is dated October 2018 which is prior to the start of the tenancy. The tenant also filed a copy of a prescription dated May 17, 2019. The tenant agreed that she did not have any issues with smells prior to September 2019. The tenant testified that she purchased an air purifier in November 2019, to rid the apartment of the strange smells.

The tenant submitted into evidence several screenshots from the air purifier that displayed varying air conditions within the apartment, ranging from "very poor" to "fair."

The landlord pointed out that these readouts are undated, and it is not clear where they were taken. The landlord stated that he was not notified of these readings during the tenancy which ended on January 31, 2020 but was provided with this data regarding the air quality just prior to the hearing on May 22, 2020.

The landlord stated that he has never received any such complaints regarding the air quality from prior tenants or from the current tenant.

The tenant stated that she found out that there had been a leak in the kitchen prior to her moving in and that the landlord did not disclose this to her. The tenant testified that had she been informed about this leak, she would not have moved in. The tenant emphasized that the leak may have caused mould to grow behind the kitchen cabinet which was probably the cause of the smell.

The tenant stated that she had to throw away her couch and mattress because it was contaminated with mould. The tenant is requesting to be reimbursed for the cost of these items and has filed copies of receipts for their purchase.

The tenant is claiming the following:

1.	Air Purifier	\$579.99
2.	Mattress	\$670.88
3.	Couch	\$1,060.00
4.	Rent for 9 months	\$18,000.00
5.	Endangerment to Health	\$9,000.00
6.	Filing fee	\$100.00
	Total	\$29,410.87

Analysis

1. Air purifier - \$579.99

The tenant testified that the odours started in September 2019 and she purchased an air purifier in November 2019. The tenant also testified that she informed the landlord of the poor quality of air inside the unit at the end of December 2019.

The tenant submitted into evidence several screenshots from the air purifier that displayed varying air conditions within the apartment, ranging from “very poor” to “fair.” The landlord testified that the tenant complained about the quality of air inside the rental unit after she purchased the air purifier.

Based on the testimony and evidence of both parties I find as follows:

- The readings from the air purifier are undated
- The readings were presented to the landlord after the tenancy ended
- The tenant purchased the air purifier before she informed the landlord of the problem.

Based on the above, I find that the tenant did not give the landlord an opportunity to fix the source of the alleged problem, prior to purchasing the air purifier. Accordingly, I find that the tenant is not entitled to recover the cost of the air purifier.

2. Mattress - \$670.88

3. Couch - \$1,060.00

The tenant did not file adequate evidence to support her claim that her mattress and couch were damaged by mould. The tenant did not provide any proof of having disposed of her mattress and couch and therefore the tenant's claim for the cost of these items is dismissed.

4. Rent for 9 months - \$18,000.00

5. Endangerment to Health - \$9,000.00

Section 32 of the *Residential Tenancy Act* states:

(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.

Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for a problem, if he was aware of a problem and failed to take reasonable steps to correct it. In this case, the landlord was notified of a problem by the tenant on December 27, 2019. By the tenant's own admission, the "smells" started in September 2019, but the tenant waited almost four months to inform the landlord about these "smells".

I find that the landlord acted in a responsible manner by visiting the unit the day after he received the complaint. I accept the landlord's testimony that he did not detect any odour. This finding is confirmed by the fact that the tenant did not make any further complaints until the day she was moving out. I also accept the landlord's testimony that he has not received any complaints of odours from past tenants or the current tenant.

The tenant provided verbal and documentary evidence that indicate that she had a pre-existing sensitivity to mould. However, based on the testimony of the tenant, I find that during the tenancy, the tenant did not visit a doctor to seek relief from her health issues. I find that if the problem was serious the tenant would have seen a doctor or reported it to the landlord more than once during the tenancy.

I find that the tenant informed the landlord of the problem, just one month prior to moving out. I find on a balance of probabilities that it is more likely than not that the tenant decided to move out and needed a reason to end the fixed term tenancy prior to the end date of the fixed term.

While it is possible that the tenant may have health issues, I find that since the tenant did not seek medical care, did not provide information from her doctor confirming that her health problems were directly linked to the presence of mould inside the rental unit and made just one complaint to the landlord regarding the alleged smells, she has not proven that her health issues were serious enough to justify terminating the tenancy prior to the end date of the fixed term or that they warrant compensation.

Based on the above, I find that the landlord was not negligent and complied with s.32 of the *Act*. I further find that the tenant is not entitled to her claim for the return of rent for the entire tenancy in the amount of \$18,000.00 and that the tenant is not entitled to compensation for the alleged endangerment to her health in the amount of \$9,000.00.

6. Filing fee - \$100.00

Since the tenant has not proven her claim, she must bear the cost of filing her application.

Conclusion

The tenant's application is dismissed in its entirety.

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: August 14, 2020

Residential Tenancy Branch