



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, MNDCT**

Introduction

This hearing dealt with two identical applications filed by the tenant pursuant to the *Residential Tenancy Act* (the “*Act*”) on September 16, 2020 and September 30, 2020 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. The landlords were primarily represented by their family member AR (the “landlord”). The tenant represented themselves with assistance.

As both parties were present service was confirmed. The parties each confirmed receipt of the respective materials and based on the testimonies I find each party duly 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 the 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.

The parties agree on the following facts. This periodic tenancy ended on September 30, 2018 in accordance with a notice given by the tenant. The rental unit is a basement suite in a detached home with the landlord occupying the other portion of the building. During several months in 2018 there was construction and work performed on the landlord's portion of the rental building.

The tenant submits that the work done on the building was performed in a negligent and unprofessional manner that caused damage to their suite, water ingress, personal possessions to become damaged and unusable, dust and debris to permeate their suite, and loss of quiet enjoyment. The tenant further submits that they incurred a loss of income due to the stress caused by the ongoing work. The tenant submitted some photographs of the suite and area as well as receipts for the cost of items they say were damaged and cleaning required.

The landlord disputes the tenant's claim in its entirety and says that the work performed by their agents was done in accordance with professional standards, with regular cleaning of debris and reasonable notice of the nature and scope of work that was scheduled. The landlord disputes that the tenant incurred any damage or loss as a result of the work.

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.

I find the tenant has not met their evidentiary burden to demonstrate that there has been a breach on the part of the landlords to give rise to a basis for a monetary award. Much of the tenant's evidence consists of subjective complaints and misgivings about the landlords' character which has little to do with the matter at hand. Both parties gave evidence that this landlord-tenant relationship includes some familial relationships. I find that much of the tenant's testimony focused on their view of the landlords' character more than any underlying facts relevant to their claim.

Similarly, I find much of the tenant's documentary evidence including their letters of support from witnesses are comprised of conjecture, supposition and repeating the concerns expressed by the tenant.

I find the photographs submitted by the tenant show cosmetic issues that would reasonably be expected during ongoing work and I find it is insufficient to establish that the manner of the work was done in a way that falls below what would be reasonable under the circumstances. Some debris and dust in the common areas of the rental property is to be expected and I accept the landlord's submission that the walkways were regularly cleaned to ensure safety. I find that dust and debris naturally accompany renovation work of the type done by the landlord and based on the evidence I find this was not so egregious that it would lead to a claim for damages.

I find that the tenant's belief that the landlord entered the rental unit without proper authorization on the basis of the placement of a plastic container to not be a reasonable conclusion, and in any event find no evidence of loss arising from this purported breach.

While I accept the evidence of the parties that there was some water ingress into the rental unit, I find the tenant's assessment of the damage and their submission of the cost of replacement of items to be disproportionate to what is seen in the photographs. I find the landlord's testimony that they promptly addressed the issue of water ingress and ascertained that there was little damage to be far more reasonable than the tenant's version that they suffered losses of nearly \$3,000.00 now being claimed. I find insufficient evidence that the water ingress into the rental unit caused damage to the extent the tenant now claims or at all.

I find that the tenant has not met their evidentiary onus to demonstrate that the landlord, in their actions or inaction, breached the Act, regulations or tenancy agreement. I find the tenant's claim for a monetary award fails as they have not established that they have suffered damages or loss as a result of the landlords' breach. Consequently, I dismiss both of the tenant's applications in their entirety without leave to reapply.

Conclusion

Both of the tenant's applications are 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: January 8, 2021

Residential Tenancy Branch