



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

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

The hearing was conducted by conference call. The landlord did not attend this hearing, although I waited until 2:00 p.m. in order to enable the landlord to connect with this teleconference hearing scheduled for 1:30 p.m. The tenant attended the hearing and was given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The tenant testified that on December 18, 2021, she sent a copy of the Application for Dispute Resolution and Notice of Hearing to the landlord by registered mail. A registered mail receipt and tracking number was provided in support of service. The tenant testified the tracking history shows the package was received December 9, 2021.

Based on the above evidence, I am satisfied that the landlord was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 89 & 90 of the Act. The hearing proceeded in the absence of the landlord.

Issues

Are the tenants entitled to monetary compensation for loss?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background & Evidence

The rental unit is a small 750 square feet two-bedroom apartment. The two bedrooms comprise a total of 400 square feet. The tenancy began on December 1, 2003 and ended on September 30, 2021. The monthly rent at the end of the tenancy was \$1217.65. A security deposit of \$440.00 was returned to the tenant in full after the tenancy ended. The tenant resided in the unit with her elderly parents. The other tenant on the lease was her sister but she did not regularly reside there.

The tenant testified that the landlord failed to properly address a leaky pipe on the master bedroom closet over a period of 11.5 months. As a result, the carpet and wall were constantly soaking wet causing mold and a horrible smell. The smell was so bad they could not stay in the room. The adjoining room was also affected. The issue started in October 2020 and continued until the tenants finally had enough and moved out in September 2021. The tenant submitted e-mail evidence of their numerous attempts to have the landlord remedy the issue over this period. The tenant testified the landlord did not want to spend money repairing the old building and would just make minimum efforts which failed to address the leak. After 11 months it was finally discovered that the leak was from a pipe under the baseboards which had numerous nail holes in it. Even then the landlord did not fully address as they only repaired a small section and there were more holes in the pipe further along the wall. The tenants finally decided enough was enough and gave notice to move out September 30, 2021.

The tenants are claiming \$7,425.00 as loss of use of the two bedrooms for a 11.5-month period. The tenants have calculated the loss based on the percentage of the square footage of the bedrooms in relation to the full unit at the monthly rent. The tenant testified that over this period she slept on an air mattress in the living room area while her parents slept on the sofas.

The tenants are claiming \$312.50 for laundry costs. The tenant testified that the clothes required constant washing due to the horrible smell. She calculated this at \$25.00 per month even though she estimates the actual cost was much higher.

The tenants are claiming \$1501.50 in moving expenses. The tenant submitted an invoice for this expense.

The tenants are also claiming \$1450.00 which is the security deposit paid for the new rental and a \$200.00 move-in strata fee, invoices for which were submitted.

Lastly, the tenants are claiming \$1256.66 in prorated rent for the new unit. The tenant explained that the market was very hot at the time, so they were forced to take the unit as soon as possible. Therefore, they moved into the new unit on September 18, 2021, even though they still paid rent in the old unit until the end of September. The prorated amount is calculated based on the rent of the new lease which was \$2900.00 per month.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Pursuant to section 67 of the Act, if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Pursuant to section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

The burden of proof in this case lies with the applicant tenants. I accept the tenants undisputed testimony and evidence and find the tenants did suffer a reduction in the value of the tenancy for an 11.5 month period due to the landlord's failure to repair a leak. I find that both the bedrooms could not be used by the tenants due to the horrible mold smell. I accept the tenants' calculations and award **\$7425.00** as claimed.

I accept the tenants claims for additional laundry caused in the amount of **\$312.50**. I find the tenants would have incurred additional laundry expenses and find that \$25.00 per month is reasonable.

I find the landlord is also responsible for the **\$1501.50** in moving expenses as well as the **\$200.00** move-in strata fee the tenants incurred as the tenants had no choice but to move as a result of the landlord's inaction. The tenants submitted invoices in support of this loss.

The tenants claim for re-imburement of the security deposit for their new lease is denied as this is not an immediate loss and the tenants are entitled to a return of this deposit at the end of their new tenancy.

The tenants claim for prorated rent is also dismissed. I find there was insufficient evidence to support the tenants claim that they had to immediately take the new unit due to a hot market and could not mitigate this loss by waiting until the end of the month to begin a new lease. Additionally, the tenants submitted no evidence that the additional amount of rent they were paying for the new lease was for a comparable unit, further mitigating losses.

As the tenants were for the most part successful in this application, I find that the tenants are entitled to recover the **\$100.00** filing fee paid for this application from the landlord.

The tenants are entitled to monetary award in the total of **\$9,539.00**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of **\$9,539.00**. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 22, 2022

Residential Tenancy Branch