



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNRT, MNDCT, FFT**

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; and
- authorization to recover the filing fee for this application from the landlord 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 landlord was represented by counsel (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The landlord initially claimed that they were not served with the tenant's application and materials but later said they received the hearing package. Based on the evidence I find the landlord served with the tenant's materials in accordance with sections 88 and 89 of the Act and in any event has been sufficiently served in accordance with 71(2)(c).

The tenant confirmed receipt of the landlord's materials and I find the tenant duly served in accordance with section 88.

Issue(s) to be Decided

Is the tenant entitled to any of the relief sought?

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 tenancy started on June 1, 2017 and ended on October 13, 2019 when the tenant relinquished their keys to the rental unit. The rental unit is a suite in a multi-unit strata managed apartment building. Monthly rent during the tenancy was \$1,715.00 payable on the first of each month. The security deposit for this tenancy has been conclusively dealt with in a previous decision under the file number on the first page of this decision.

The tenant filed their present application on October 13, 2021, two years to the day, after the end of the tenancy. The tenant seeks a monetary award in the amount of \$10,852.60 comprised of a retroactive reduction of rent for the months of July through September 2019, costs of mold testing the tenant commissioned, moving, and other expenses the tenant claims they incurred due to the actions or negligence of the landlord.

The parties agree that in April 2019 the strata corporation for the property began work for upgrades to the roof to the building. The tenant submits that during this process they were given inadequate information or notice, had workers enter the rental unit without permission or notice and incurred a loss in the value of the tenancy and damage to personal items. The tenant submits that there were leaks in the rental unit and water ingress which resulted in the growth of mold in the suite.

The tenant says they made requests of the landlords to hire professionals to assess the air quality in the rental unit but the landlords declined to take action. The tenant ultimately retained a third party company to perform an inspection at their own expense. The tenant characterizes the inspection as an emergency repair and seeks a monetary award to recover the costs of the inspection of \$525.00.

A copy of the mold report dated September 12, 2019 was submitted into evidence. The report notes a higher than expected presence of mold in some areas of the rental unit.

The tenant submits that as a result of the presence of mold, the ongoing construction work and workers entering the rental unit without sufficient notice or permission the tenant was forced to end the tenancy and incur costs to relocate.

Analysis

Pursuant to Rule of Procedure 6.6 the onus is on the applicant, the person making the claim, to prove their claim on a balance of probabilities.

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.

Section 33 of the *Act* describes “emergency repairs” as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for specific purposes outlined in the *Act*.

I find, on a prima facie basis, that inspections are not repairs. Inspections involve examination and testing but do not involve any remediative elements. I find that mold testing is not an emergency repair, or a repair at all, and consequently there is no basis for this portion of the tenant’s claim.

While I accept the evidence of the tenant that the presence of mold was discovered in the rental unit, I find there is insufficient evidence to establish a basis for a monetary claim. The professional report submitted by the tenant indicates the presence of mold in some areas of the rental unit that were tested but I find little evidence to conclude the rental unit was uninhabitable or necessitated this tenancy end.

I find much of the tenant’s claim to not be supported in the evidence or their submissions. I find a handful of undated photographs to be of little assistance in determining that the condition of the rental unit was so far below what would be reasonable under the circumstances that it gives rise to a basis for a monetary award. Similarly, I find that much of the documentary evidence consists of their own

correspondence and complaints which I find to be of limited probative value as they reflect the tenant's subjective views.

Viewed in its totality I am unable to find sufficient evidence to support the tenant's claim. The report from the third-party company simply indicates that there is a likelihood of mold growth but does not provide that the presence of mold necessitates the rental unit being vacated or that the suite is unusable.

I find that the tenant has not met their evidentiary burden to establish their claim on a balance of probabilities. I am not satisfied that there has been any breach on the part of the landlord giving rise to a monetary award. Consequently, I dismiss the tenant's present application in its entirety without leave to reapply.

Conclusion

The tenant's 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: June 2, 2022

Residential Tenancy Branch