



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DREWCO PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue to be Decided

Is the tenant entitled to a monetary award for damage or losses arising out of this tenancy?

Background, Evidence

The tenant's testimony is as follows. PC testified that he rented a room in a shared accommodation space on January 24, 2018 and moved out on February 28, 2020. PC testified that he paid \$435.00 per month. PC testified that his window would leak anytime it would rain. PC testified that he started feeling sick after a couple of months of moving in. PC testified that he brought this issue to the attention of the building manager and was brushed off. PC testified that after a week of heavy rain he noticed a large puddle of water on the windowsill.

PC testified that whenever he brought the issue up with the owner or manager he was ignored. PC testified that when he approached LD that he wasn't happy with the mold issue, she offered for him to move out without notice or need to clean the room and was given his deposit back in full and one hundred dollars for the night to rent a motel. PC testified that when he started packing up, he noticed mold on many of his personal items and was able to put his finger through the wall as it had gotten soft from water leaking in. PC testified that he became very sick from the mold, and it took him over a year to get back to ninety percent.

PC testified that the owner paid for one months of storage for his belongings as well as his moving costs and thought the matter would be dealt with amicably, but the owner cut off all communications with him and never followed through with action. PC testified that he should be entitled to all of his rent back for a 25-month tenancy, plus \$15,000.00 as compensation for being sick for year and \$1000.00 for damaging CD's and DVD's for a total claim of \$26,875.00.

LD gave the following testimony. LD testified that the unit did have a small drip that would come through the window but only on a very rare occasion and that it did not cause a problem as alleged. LD testified that the tenant lived in the building in a different room prior to this tenancy, then went to Spain, and then returned and asked if any rooms were available. LD testified that the tenant advised he had been living with an elderly woman and moved out because of mold. LD testified that the tenant told her

that he arrived with a trailer that was full of mold. LD testified that the tenant did not mention any health issue to her while he lived there.

AW testified that the tenant has not provided any evidence or dialogue of illness or sickness during his time as a tenant. AW testified that the tenant did not provide conclusive medical evidence that the tenant became sick because of the unit. AW testified that they have never had issues with mold in the building prior to this tenant and he has many tenants that have lived in the building for 10-20 years. AW testified that it is ironic that the tenant moved out of his previous residence due to mold and had a trailer full of mold and then complains that this suite had mold.

AW testified that the tenant has been aggressively pursuing this matter to the point he no longer wanted contact with him. AW testified that he adamantly opposes any monetary award to the tenant as he's failed to prove that the mold was the landlords' fault or any proof of illness.

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 provide **sufficient evidence of the following four factors**;

1. *Proof that the damage or loss exists,*
2. *Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,*
3. *Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and*
4. *Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.*

The tenant failed to satisfy two of the elements listed above, specifically #3 and #4. The tenant has applied for a monetary claim of \$26,875.00. Despite being given a full opportunity to present his claim, the tenant did not provide a clear and cogent explanation and calculation as to how he arrived at the amount sought. In addition, the tenant did not provide sufficient evidence of mitigation as required under section 7(2) of the *Act*, such as letters, emails, or text messages of his concerns about mold to the landlord and proof to corroborate it. Much of the tenants' evidence is from his last day in

the unit during his move out. He provided a copy of letter that he says was ignored but failed to explain what steps he took to notify the landlord. Based on the insufficient evidence before me and on a balance of probabilities, the tenant has not proven his claim, accordingly; I dismiss the tenants' 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: October 06, 2022

Residential Tenancy Branch