



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding METCAP LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RP, FFT

Introduction

This hearing dealt with the adjourned Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act* (the “Act”) for a monetary order for monetary loss or other money owed, for an order for the Landlord to make repairs to the rental unit, and to recover the filing fee paid for this application. The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”) and the Tenant attended the hearing and were reminded that their affirmation provided during the previous proceeding, and that it carried forward to this hearing. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlords and the Tenant testified that they received each other’s documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to a monetary order for monetary loss or other money owed?
- Is the Tenant entitled to an order for the Landlord to make repairs to the rental unit?
- Is the Tenant entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement recorded that this tenancy began on April 1, 2010, and that the Tenant paid the Landlord a \$475.00 security deposit and the beginning of the tenancy. The Tenant submitted that the current rent for this rental unit is \$1,170.41 and is due on the first day of each month. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that they informed the Landlord, in writing, on December 17, 2020, that the unit next to them was smoking inside their unit, which was causing second-hand smoke to seep into their unit. The Tenant submitted that they have called the Landlord six times and emailed them six times since they initially informed them of the smoker and the Landlord has not done anything to address the issue. The Tenant submitted a timeline of their contacts with the Landlord, copies of six emails, and three witness statements into documentary evidence.

The Landlord testified that they have received the Tenant's complaints regarding the smell of smoke in their rental unit and that they have acted upon them but that they have found no evidence that the Tenant's neighbour or anyone else is smoking in their unit or on the rental property. The Landlord submitted that they issued a reminder letter to the Tenant's neighbour that there is no smoking, and they have visited that unit and found no evidence of that person smoking in their unit. The Landlord submitted a copy of the letter into documentary evidence.

The Tenant submitted that on April 8, 2021, they requested that the Landlord seal the gaps between their rental unit and their neighbour's unit, noting the kitchen area under the counters and the electrical outlet as key areas as the largest source of smoke in their rental unit. The Tenant testified that the Landlord has refused to make these requested repairs.

The Landlord testified that they received the Tenant's request for repairs and that they brought a general contractor into assess the need for the requested repair. The Landlord testified that the contractor had advised them that the requested repairs were not required. The Landlord submitted a copy of a letter from the general contractor into documentary evidence.

The Tenant submitted that they have been and continue to be exposed to second-hand smoke from their neighbour and that due to the Landlord's refusal to do anything about it or make the requested repairs to the unit, they are requesting the recovery of their rent going back to December 2020 when they initial submitted their complaint to the Landlord. The Tenant submitted a date record of the times they smelt smoke in their rental unit into documentary evidence.

The Tenant submitted that they are seeking to have the non-smoking tenancy rules enforced in the rental building, that a repair order be issued to seal the gaps in the walls between their rental unit and their neighbour's unit and to a requested monetary order in the amount of \$31,668.00, consisting of a return of rent for loss of quiet enjoyment, and reimbursement of air cleaning aide supplies.

The Landlord's resident property manager testified that they live on the other side of the Tenant's neighbour and that they have never smelt smoke in their unit or in the hallway. The Landlord's resident property manager also testified that they have attended the Tenant's rental unit each time they were notified of the smell of smoke but that they have never smelt smoke in the Tenant's unit.

The Landlord submitted that there are smokers who live in the building and confirmed that all smokers are required to smoke outside. The Landlord also submitted that they haven not received any other complaints about the smell of smoke in the building from other residents.

Analysis

Based on the evidence before me, the testimony, and on a balance of probabilities I find that:

In this case, the Tenant is claiming for \$31,668.00 in compensation and an order that the Landlord repair their rental unit by insulating the electrical outlets between the Tenants unit and the unit next to them and closing off all gaps in the walls between these two units.

After reviewing the submission of these parties, I find that the Tenant's application rests on their claim that there is the presence of second-hand smoke in their rental unit.

I accept the agreed-upon testimony of these parties that the Tenant had advised the Landlord in December 2020, of the presence of second-hand smoke seeping into their unit, verbally and in writing. I also accept the agreed-upon testimony that the Landlord has sent in a professional technician to investigate the presence of gaps in the walls that connect the Tenant's unit to the neighbouring unit.

However, during the hearing, I heard contradictory testimony from these parties regarding the presence of second-hand smoke in the Tenant's rental unit or the rental property, and the need for repairs to the Tenants rental unit. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that is the Tenant.

The Tenant has submitted three witness statements to support their claim; after reviewing these statements I noted that two of these three statements provide an account of the Tenant complaining to these witnesses about the smell of smoke, which I find to be of no evidentiary value. The third witness statement does provide a firsthand account of the "smell of cigarette smoke," on June 24, 2022, in the Tenant's rental unit. However, I find this one instance of the "smell of cigarette smoke" to be insufficient to prove the presence of second-hand smoke in the Tenants rental unit dating back to December 2020, nor is it sufficient to prove that the of the "smell of cigarette smoke" was coming from inside the rental property.

After a thorough review of all of the Tenant's documentary evidence, I find that the Tenant has not provided sufficient evidence to support their claim that there is someone smoking in the rental unit next to them, or that smoke is seeping into their unit. Additionally, I find that there is no evidence before me to show that there is a need to insulate the electrical outlets or close of gaps in the wall between the Tenant's unit and the unit next door.

Overall, I find that the Tenant has failed to provide evidence sufficient to prove the presence of second-hand smoke in their rental unit or the need for repairs to their rental unit. Consequently, as the Tenant has not been successful in proving the presence of second-hand smoke in their rental unit, I dismiss the Tenant's application for an order for regular repairs and for monetary compensation in their entirety.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant has not been successful in this claim, I find that they are not entitled to the return of their filing fee for this application.

Conclusion

I dismiss the Tenant's application 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: June 7, 2023

Residential Tenancy Branch