



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, FF

Introduction

This conference call hearing was convened in response to the tenant's application for a Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They presented oral evidence and confirmed receipt of the material they intended to present at the hearing.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and if so for what amount?

Background and Evidence

The rental unit consists of an older detached home with basement. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease, starting on July 1st 2008 and ending on June 30th, 2009, after which it continued month to month until June 30th, 2010. The monthly rent of \$1800.00 was payable on the first of each month. The tenant paid a security deposit in the amount of \$900.00. Although not provided at the hearing, the parties agreed that a condition inspection report was completed at the end of the tenancy, but not at the start.

The tenant referred to his four-page written submission to present his evidence.

He testified that mould started to appear approximately two to three months after moving in. He stated that he notified F.T., the landlord's property manager, in September or October 2008. The tenant stated that F.T. came and did nothing. The tenant said that he tried to clean and move furniture to prevent it from being contaminated. In his evidence, the tenant provided in part the following: 14 photographs showing mould build-up in various locations inside the rental unit; 5 photographs of prescription bottles; and 44 other photographs showing either damaged areas or areas of the suite undergoing restoration work.

Concerning the sewer back up incident, the tenant stated that he notified the landlord on March 25th, 2008, that the problem was fixed the next day, but that it took two months for the sewer system to function normally.

The tenant said that at the end of the tenancy, he completed a move-out condition inspection report. The tenant said that everything was good and that he signed the report.

According to his written submission, the tenant's monetary claim consists of; a 30% rent reduction from August 2008 to March 25th, 2010 for the sum of \$10,695.48 due to the mould; and complete rent reimbursement from March 25th, 2010 to June 6th, 2010 for \$4296.77 due to the sewer system back up.

F.T. testified that the tenant did not report the mould until November 2008, and that he attended the next day. He stated that he immediately hired a handy man who cleaned, sprayed and repainted the walls. F.T. stated that on several occasions when he came to pick up the rent, he noticed that the house was cold. He stated that mould re-appeared as a result, and that he informed the tenant that the house needed proper heat and proper ventilation. F.T. stated that he gave the tenant an oil heater to prevent further problems. F.T. stated that out of caution he installed a new roof and two new windows in September 2009, and that the total cost of all repairs added up to \$6000.00.

Concerning the sewer back up, F.T. confirmed the tenant's evidence that he took immediate action and had the problem fixed the next day, which included blowers to dry the basement from the resulting flood. F.T. stated that he made regular visits and checks with the progress of all repairs ordered on the property.

F.T. stated that in September 2009, the tenant approached him about buying the house. F.T. told the tenant that the house was an investment property and was not for sale. The tenant acknowledged his interest in the house because of its proximity to school and work, however stated that he was going to tear it down. The tenant also argued that he kept the house around 22-23 degrees in the winter.

Analysis

In this application, the burden is on the tenant to prove his claim. To do this, the tenant must provide sufficient evidence to establish that the landlord violated the Act, Regulation, or the tenancy agreement; that the violation resulted in damage or loss to the tenant; that the actual amount required to compensate for that loss is verifiable; and that the tenant did whatever was reasonable to minimize the damage or loss.

Although the condition inspection report was not included in the evidence, there was no dispute that it was signed to the parties' satisfaction. On that basis alone I find no evidence that the landlord breached the Act, Regulation, or the tenancy agreement. The tenant claimed for loss of quiet and enjoyment, however did not file for dispute resolution until two and a half years later. The landlord testified that he took immediate action for every request made for repairs and I prefer that evidence over the tenant's.

The tenant did not refer to his photographs at the hearing. In view of the submissions concerning the condition inspection report, I find the photographs do not support the landlord's violation of the Act, Regulation, or tenancy agreement.

Concerning the photographs of prescription medication, there was no evidence to associate the health problems with the condition of the rental unit.

I find that the evidence supports that the landlord complied with the Act. F.T. attended the unit, made repairs, verified on the work performed, and provided the tenant with instructions and an oil heater.

Based on the above, I find that the tenant provided insufficient evidence to support his claim for loss and I dismiss the application.

Conclusion

The tenant's claim is dismissed 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: February 09, 2011.

Residential Tenancy Branch