

## **Decision**

### **Dispute Codes:**

MNDC, FF

### **Introduction**

This is the Tenants' application for a Monetary Order for compensation for damage or loss; and to recover the cost of the filing fee from the Landlord.

I reviewed the evidence provided prior to the Hearing. The Tenants gave affirmed testimony and the Hearing proceeded on its merits.

### **Issues to be Decided**

- Are the Tenants entitled to a Monetary Order for compensation for damages or loss, and if so, in what amount?

### **Background and Evidence**

The Tenant DD gave the following testimony and evidence:

The Tenants mailed the Landlord the Notice of Hearing documents, by registered mail, on December 7, 2009. The Tenant provided the tracking number for the registered mail document. The documents were received by the Landlord on December 8, 2009.

The Tenants entered into a tenancy agreement with the Landlord on October 19, 2009. The Tenants moved into the rental unit on or about October 27, 2009. Rent was \$1,200.00 per month. The Tenants paid a security deposit in the amount of \$600.00 and a pet deposit in the amount of \$100.00 at the beginning of the tenancy. The Tenants provided the Landlord with post dated cheques for rent from December, 2009 to December 2010. The Landlord has not returned the post dated cheques to the Tenants.

On November 7, 2009, the Tenants noticed mould forming on the walls of one of the bedrooms. The Tenants called the Landlord right away. On November 9, 2009, the Strata Corporation for the building sent a building inspector to inspect the area outside the Tenant's suite. On November 10, 2009, the Tenants noticed the mould growth was getting worse, due to heavy rain. The suite was flooded and the hardwood floor were buckling from the moisture.

The Tenants attempted to call the Landlord on November 12, 2009, but the Landlord was out of town. The Tenants called the emergency number provided by the Landlord, but they could not reach anyone.

On November 14, 2009, the water was seeping up through the floor and the mould was growing. The Tenants contacted the building manager, who advised the Tenants that no work could be done until it stopped raining. The building manager said the Tenants were overreacting and told the Tenants to wipe down the mould.

By November 18, 2009, water was puddling on the floors, and the Tenants had to use a fresh towel every day to sop up the water. The mould growth was spreading to other walls in the rental unit. The Tenants noticed that water was starting to leak through the hardwood beside the patio doors.

On November 20, 2009, the building manager refused to look at the Tenant's suite. The Landlord was still unreachable.

On November 22, 2009, the Tenants sent an e-mail to the Landlord, to the e-mail address provided in the tenancy agreement. The Landlord did not reply. The Tenants sent another e-mail to the Landlord on November 27, 2009, stating that they were beginning to feel ill and would have to end the tenancy. The Tenants arranged for a Property Use Inspector for the City to inspect the rental unit, who verified mould in the Tenant's suite.

On November 29, 2009, the Landlord finally contacted the Tenants. The Landlord offered to have the walls wiped down with bleach and to provide a dehumidifier. The Tenants and the Landlord came to an agreement that the Tenants would move out of the rental unit by December 5, 2009, and would pay the Landlord prorated rent for the period between December 1 and December 5, 2009. The Tenants agreed that the Landlord could keep part of the security deposit for rent from December 1 – 5, 2009.

The Tenants cleaned the suite and moved out of the suite on December 4, 2009. The Landlord met with the Tenants at 1:00 p.m. on December 5, 2009. The Landlord returned the Tenant's pet deposit in the amount of \$100.00. The Landlord offered to return \$200.00 of the \$600.00 security deposit, but the Tenants told the Landlord that they did not agree because they did no damage to the suite.

The Tenants provided the Landlord with their forwarding address in writing on December 4, 2009. The Landlord has not returned any of the \$600.00 security deposit to the Tenants.

The Tenants are applying for compensation for damage or loss in the amount of \$500.00. The Tenants stated that they meant to apply for return of the security deposit, but did not include it in their Application for Dispute Resolution.

### **Analysis**

I accept the Tenants' testimony that the Landlord was served with the Notice of Hearing documents by registered mail. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the conference and the Hearing proceeded in his absence.

Based on the undisputed testimony and supporting documentary evidence of the Tenants, I find that the Landlord and the Tenants had a mutual agreement to end the tenancy on December 5, 2009. I further find that the Landlord did not mitigate, or act in a timely manner, with respect to the water damage and mould. The Tenants first

advised the Landlord of the water damage and resulting mould on November 5, 2009. The Landlord did not attempt to address the water damage or mould until November 29, 2009, when he suggested the Tenants wipe down the walls with bleach and offered the use of a dehumidifier. I find that the Tenants are entitled to compensation for loss of peaceful enjoyment of the rental unit from November 5, 2009, to November 30, 2009, in the amount of \$250.00. The Tenants did not pay any rent for December, and therefore I make no monetary award for the period of December 1 to December 5, 2009.

The Tenants did not apply against the security deposit on their Application for Dispute Resolution. Therefore, the security deposit remains available on application by either party, to be applied in accordance with the provisions of Section 38 of the Act. A copy of Section 38 is attached to this Decision.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord.

I hereby provide the Tenants with a Monetary Order against the Landlord in the amount of \$300.00.

I hereby order the Landlord to return the Tenants' post-dated rent cheques forthwith.

### **Conclusion**

I hereby grant the Tenants a Monetary Order in the amount of \$300.00 against the Landlord. This Order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

The security deposit remains available on application by either party, to be applied in accordance with the provisions of Section 38 of the Act.

I hereby order the Landlord to return the Tenants' post-dated rent cheques forthwith.

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: May 5, 2010