



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNDC

Introduction

This hearing dealt with an application by the tenants seeking a monetary order for money owed or compensation for damage or loss under the Act, the regulations or the tenancy agreement and seeking the return of double the security deposit. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Are the tenants entitled to any of the above under the Act, the tenancy agreement, or the regulations?

Background and Evidence

Both parties agree to the following; the tenancy began on or about August 27, 2011. Rent in the amount of \$800.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$400.00. Neither a move in or move out condition inspection report was conducted by the landlord. The tenants resided in a two bedroom basement suite of a six year old home. The landlords resided upstairs on the main floor. The tenants had control of the thermostat for the electric base board heaters in the unit and the landlord controlled the forced air heating. There are five vents in the ceiling of the tenants unit that allows the heat and air to flow through the suite and the tenants are able to open and close those vents as needed or required.

The parties agree to the timeline of events as follows;

On June 28, 2012 the tenants discovered mold on their couch, they immediately notified the landlord and the landlord attended downstairs to inspect.

On June 29, 2012 the landlord had a friend who was a handyman attend to see if he could determine the cause of the mold. On that same day the landlord was leaving for a holiday and not going to return until the late afternoon of July 9, 2012.

On July 8, 2012 the tenants contacted the landlord on his cell phone to advise the situation had gotten worse and gave verbal notice that they would be moving out. The tenants' began removing all items that had any signs of mold on them out onto the sidewalk.

On July 9, 2012 the landlords returned from their vacation. The landlords attended to view the suite.

On July 12, 2012 the tenant's gave the landlord their notice to vacate the unit in writing. In that same letter they stated that they would be bringing in a mold specialist to inspect the suite.

On July 13, 2012 the tenant's had an independent "mold specialist" attend to inspect the unit.

On July 16, 2012 the tenant's moved out.

As stated earlier both parties agreed to the timeline of events as listed above however the cause of the mold is in dispute.

The tenant's gave the following testimony; many of their personal items were covered in mold and green spots. The tenants stated the laminate floor began to buckle from all the moisture and that there were damp spots and stains in the carpet area. The tenants were very concerned for their health and brought this to the attention of the landlord. The tenant's were told by the landlord that he would have the carpets cleaned and that

he would have someone take a look at the suite. The tenants stated that the landlord accused them of causing this situation and that he became angry when they advised him of the mold. The tenants stated that the landlord accused them of not using enough heat due to their responsibility of paying 1/3 of all utilities cost and that they didn't open up the windows to allow airflow.

The landlords gave the following testimony; purchased the house one month prior to the tenants moving in, had an inspector inspect the home prior to purchasing it, the inspector did not find any deficiencies with the home; mold issues or plumbing issues, adamantly disputes the severity of claims made by the tenant's in regards to mold on their personal items. The landlord submitted that he and his wife viewed the items that were put outside for disposal by the tenant's and none of the items appeared to have any mold on them. The tenants submitted that it had rained overnight and that it had washed away the mold; the landlord stated that didn't make sense. The landlord offered to the tenants to sleep in the upstairs portion of the home if they preferred while the matter got resolved, the tenants declined. The landlord had someone attend to check the plumbing and was informed all appeared to be in order. Upon returning from their vacation the landlords and tenants had a falling out and were not able to come to any agreement as to the next step in trying to resolve the matter. The tenants moved out on July 16, 2012. The landlords submitted that the tenant's left the unit "very very dirty" and were probably the reason why the mold started. The landlord then took steps to investigate and correct the situation. The landlord and his wife cleaned the unit and had inspectors test and inspect the suite. There are no longer any issues with the suite.

Analysis

Both parties provided extensive documentary evidence. All parties' testimonies and evidence have been considered in making a decision. As this matter was conducted over 3 hours of hearing time, all issues, evidence and arguments were considered but for the sake of clarity and brevity this decision will not repeat each and every aspect of the hearing, instead it will focus directly on the claims as made by the applicant.

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the tenants must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

To prove a loss the applicant must satisfy the following four elements:

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.

As the tenants are the sole applicants in this matter I will address their claims and my findings as follows:

First Claim- The tenants are seeking the return of double the security deposit. The landlord did not dispute this portion of the tenants' application. The landlord acknowledged that due to his limited familiarity with the English language he was unaware of his responsibilities as a landlord in regards to the security deposit and conceded that the tenants should be granted this portion of their claim. I find that the tenants are entitled to the return of double their security deposit $\$400.00 \times 2 = \800.00 .

Second Claim – The tenants are seeking a monetary order of \$8747.97. Of that amount the tenants are seeking \$5000.00 compensation for “what we had to endure during that time” and \$3747.97 for the replacement of personal items, furniture and moving costs. The tenants submitted photos depicting mold on their personal items as

well as their furniture. The landlords feels the tenants do not have a basis to this claim as he hired the same mold inspector used by the tenant's and all items were mitigated and remediated by July 31, 2012. The landlord feels the tenants did not allow for proper air circulation in their suite and did not open the heat vents that are situated on the ceiling of their suite as stated on the inspectors report. The tenant's submitted that they did close them sometimes but only to limit sound and smell coming from the landlords upstairs. The landlords also submitted that the tenants did not take any steps to mitigate the situation. The landlords feel they have done everything they could possibly do to correct the situation in the short time they were given. The landlord also submitted that after he cleaned the suite the mold issue was resolved and that the tenants should have made attempts to clean while he was on vacation.

As stated earlier in this decision the tenants must satisfy all four elements when making a claim for compensation. Although the landlord and tenants have a different view of the amount of mold present I do accept that there was somewhat of a mold issue. However, the tenants have failed to satisfy my of the three remaining elements. The tenants advised the landlord of the situation at 11:30pm on June 28, 2012. The landlords were leaving for a vacation the following day but still had someone attend to inspect the suite on June 29, 2012. The landlord was of the belief that shampooing the carpets would alleviate the situation and that he would follow up as soon as he returned. The tenants contacted the landlord while still on vacation on July 8, 2012 and gave verbal notice that they were moving out. The tenants have failed to show how the landlords' action or neglect was the cause of the mold originating, they have also failed to provide actual proof of loss and have failed to show any steps they took to mitigate the situation. The tenants did not offer sufficient evidence in regards to attempts to clean the mold or provide heat and proper ventilation to the unit.

The tenants decided to give notice to the landlord on July 8 2012; the day prior to the landlord returning from vacation, however by doing this the tenants did not allow the landlord a reasonable opportunity to resolve the problem as the landlord was out of the country until July 9, 2012. The landlord provided extensive documentation and receipts

showing that he did everything that he could reasonably do. The landlord provided a report from the same mold specialist that the tenants hired, to show that all issues, but one minor one, had been remediated and mitigated by July 31, 2012. I find that the landlord acted reasonably and in accordance with the Act. Based on all of the above I am not satisfied that the tenants have proven this portion of their claim and I therefore dismiss this portion of their application.

As for the monetary order, I find that the tenants have established a claim for \$800.00. The tenants are entitled to recovery of a \$50.00 filing fee. I grant the tenants an order under section 67 for the balance due of \$850.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenants are entitled to a monetary order in the amount of \$850.00.

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 22, 2012.

Residential Tenancy Branch