Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application filed April 3, 2013: MNDC; MNSD; FF

Landlords' application filed April 15, 2013: MNSD; MNDC; FF

Introduction

This Hearing was scheduled to consider cross applications. The Tenants seek compensation for damage or loss; return of security deposit and to recover the cost of the filing fee from the Landlord.

The Landlord seeks compensation for damage or loss; to apply the security deposit in partial satisfaction of his monetary award; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord was served with the Tenants' Notice of Hearing documents by registered mail sent April 3, 2013, and with the Tenants' documentary evidence by registered mail sent June 11, 2013.

It was also determined that the Tenants received the Landlord's Notice of Hearing documents on April 16, 2013, by registered mail, and the Landlord's evidence package on June 18, 2013.

Issues to be Decided

- Are the Tenants entitled to compensation for damage to their belongings caused by mould; loss of use of a portion of the rental unit; lost wages; and stress?
- Are the Tenants entitled to return of the security deposit?
- Is the Landlord entitled to compensation for loss of revenue for the month of April, 2013? If so, may the Landlord apply the security deposit in partial satisfaction of his monetary award?

Background and Evidence

The Landlord provided a copy of the tenancy agreement in evidence. This tenancy began on May 15, 2012. The Tenants moved out of the rental unit on March 2, 2013.

Monthly rent was $1,100.00, due on the first day of each month. The Tenants testified that the due date for rent was changed to the 6th day of each month, by oral agreement. The Tenants paid a security deposit in the amount of $550.00 on April 23, 2012. There was no Condition Inspection Report completed that complies with the requirements of Section 20 of the regulations, at the beginning or the end of the tenancy.

The Tenants gave the following testimony:

The Tenants submitted that they moved out of the rental unit because it was full of mould that was making them sick. They stated that they advised the Landlord on January 20, 2012, about water leaking into the rental unit from the roof; water intrusion into the front room and bathroom; and the shed and chimney detaching from the house. They stated that the Landlord came to the rental unit on January 22, 2012, promising to return to fix the problem.

When the Landlord did not return by January 30, 2012, the Tenants called him again. On February 3, 2012, the Landlord came over and walked on the roof of the rental unit and then left. The Tenants testified that they called him again on February 10, 2012, that he returned on February 15, 2012, and that he told the Tenants he would remove the wet carpet by February 17, 2012, and asked the Tenants to remove their things from the shed. The Landlord never returned.

The Tenants noticed things were getting mouldy and emailed the Landlord on February 26, 2012, giving him notice that they had to move out on March 2, 2012, because of the mould. The male Tenant had to get an inhaler because the mould was causing reactive asthma.

The Tenants left the rental unit in a reasonably clean condition at the end of the tenancy. The Tenants provided a copy of the male Tenant's pulmonary test result dated January 31, 2012, along with a letter from his doctor and photographs of the rental unit and some of the Tenants' mouldy belongings.

The Tenants received an e-mail from the Landlord on March 3, 2013, which indicated that the Landlord understood that the Tenants had to move "because of [the male Tenant's] breathing problems". The Tenants e-mailed the Landlord their forwarding address on March 4 and again on March 8, 2013. The March 8th e-mail included a list of damages that the Tenants incurred as a result of the mould in the rental unit. On

March 12, 2013, the Landlord replied by e-mail giving reasons why he would not be returning the security deposit. Copies of e-mails were provided in evidence.

The Tenants seek a monetary award, calculated as follows:

Cost of male Tenant's medication (inhaler)	$50.00
3 hours of lost wages for male Tenant's hospitalization on January 31, 2013 ($25.00 x 3)	$75.00
Return of security deposit	$550.00
Loss of use of three rooms due to mould for one month	$550.00
Stress	$3,000.00
Pantry damaged by mould (paid $140.00)	$80.00
Tent damaged by mould (paid $300.00)	$200.00
Sun chair damaged by mould	$29.00
4 camping chairs damaged by mould	$80.00
2 survival suits damaged by mould (paid $450.00 each)	$400.00
Dresser damaged by mould	$40.00
TOTAL	$5,054.00

The Landlord gave the following testimony:

The Landlord first heard about mould issues on January 20, 2013, and attended the rental unit the next day. He didn't see much of a concern except wet carpets and mud. He saw mould on the window sills and baseboards, but assumed it was there because of the Tenants' pet pig. The only article he saw that was damaged by mould was the Tenants' tent. The rental unit smelled musty, but not bad.

There are two storage areas at the rental unit. An outdoor, unheated shed and a storage room in an add-on where the car port used to be. The Tenants stored their tent outside in the unheated shed where mould can grow. They should have stored their things indoors in the heated storage room.

The Landlord noticed that the baseboards in the storage room and the living room were not turned on and that rental unit was cold. This could have caused mould growth.

The Landlord disagrees that water came into the rental unit from the roof. There was a small area in the roof that may have let water in, but he fixed it with flashing. He did not see any mould and offered to take the roof down to see if water was coming in. He made attempts to set up appointments, but the Tenants said that they were working and this delayed his access to the rental unit.

The Landlord thought the musty smell was the pig. He believes the pig caused the carpet to be wet.

The Landlord stated that he did not receive the Tenants' forwarding address in writing until he was served with their Application for Dispute Resolution.

The Landlord seeks compensation for one month's loss of revenue in the amount of $1,100.00 because the Tenants did not give him due notice to end the tenancy. He also seeks to keep the security deposit for damages to the carpet and because the Tenants did not leave the rental unit clean.

The Landlord's witness gave the following testimony:

At the end of the tenancy she did not see the outdoor shed, but saw the heated storage room. She saw mould around the windows.

The carpet was mouldy and the walls had splatters of mud on them, which she believed to be from the pig.

The rental unit smelled musty at the end of the tenancy.

The Tenants gave the following rebuttal testimony:

The dampness in the rental unit had nothing to do with their pet pig. They do not know what the Landlord and his witness are referring to when they refer to mud splatters on the walls.

The tent, the sun chair and the camping chairs were stored outside in the shed, but the rest of the mouldy items were stored inside in the storage room.

The baseboard heaters were turned on, but the house was damp.

Analysis

Regarding the Tenant's Application:

The Tenants have claimed for damage or loss under the Act and therefore they have the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 32(1) of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Landlord pay for the loss requires the Tenants to satisfy four different 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 Landlord in violation of the Act,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Tenants followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

I find that the Tenants have provided sufficient evidence that their belongings were damaged by mould. However with respect to the tent, the sun chair and the camping chairs, I find that the Tenants did not provide sufficient evidence that they were damaged due to the actions or neglect of the Landlord. The damage occurred in the winter time, when it is typically cold and wet. The Tenants did not take precautions to avoid mould from forming (for example, moving the items into the heated storage room inside the rental unit. Therefore, the Tenants' application for compensation for these items is dismissed.

The photographs provided by the Tenants and the testimony of the Landlord's witness support the Tenants' submissions that there was mould in the rental unit. I find that the evidence also indicates that the mould was probably caused by water leaking into the rental unit from the roof, gutters, and other areas (the base of the fireplace and the bathroom floor). I do not accept the Landlords' submission that the Tenants' pet pig caused the carpet in the rental unit to be wet. There was no smell of urine, and I do not find it probable that an animal could uniformly wet a carpet the size of a room. Based

on the testimony and documents provided (e-mails and photographs), I accept the Tenants' submission that they advised the Landlord about the moisture problem on January 20, 2013, and that the Landlord did not correct the problem. I find it most probable that the mould grew as a result of the Landlord neglecting to comply with the provisions of Section 32 of the Act. I accept the Tenants' evidence that they tried to mitigate their losses by repeatedly asking the Landlord to fix the leaks.

The Tenants did not provide sufficient evidence of the cost to compensate them for the loss of the mouldy items. For example, no documentary evidence was provided to prove the cost of the survival suits. However, I am satisfied that the Tenants did suffer a loss and therefore, I allow this portion of their claim in the nominal amount of **$50.00** for the pantry, dresser and survival suits.

The Tenants provided no medical evidence to support their claim for "stress" in the amount of $3,000.00. The Tenants did not provide sufficient evidence to support their claim for the cost of the male Tenant's inhaler (for example a receipt), or to support their claim for lost wages. Therefore this portion of their claim is dismissed.

I find that the Tenants did not have full use of the rental unit from January 20, 2013 to the end of the tenancy as a result of the Landlord's failure to comply with Section 32 of the Act, and that the value of the tenancy was diminished as a result. I allow the Tenants' claim in the amount of **$550.00** for this portion of their application.

The security deposit is held in a form of trust by the Landlord for the Tenants, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's **written consent** to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, a landlord has **15 days** to either:

1. **repay the security deposit** in full, together with any accrued interest; **or**
2. **make an application** for dispute resolution claiming against the security deposit.

(emphasis added)

In other words, a landlord may not keep the security deposit without the Tenant's written permission or an Order of the Director allowing the Landlord to apply the security deposit towards damages or unpaid rent.

Based on the documentary evidence provided, I find that the parties communicated by e-mail to a large degree. The Tenants provided documentary evidence that they provided their forwarding address by e-mail on March 8, 2013, and that the Landlord responded to that e-mail on March 12, 2013. Therefore, pursuant to the provisions of

Section 71(2)(b) of the Act, I find that the Landlord was sufficiently served with the Tenants' forwarding address on March 12, 2013. I find that the Landlord did not return the security deposit or file an application against it within 15 days for receipt of the Tenants' forwarding address.

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit. Therefore, I find that the Tenant is entitled to a monetary order for double the security deposit, pursuant to the provisions of Section 38(6) of the Act, in the amount of **$1,100.00**. No interest has accrued on the security deposit.

The Tenants have been partially successful in their application and I find that they are entitled to recover part of the cost of the filing fee from the Landlord, in the amount of **$50.00**

The Tenants have established a total monetary award of **$1,750.00** against the Landlord.

Regarding the Landlord's Application:

The security deposit has been extinguished under Section 38(6) of the Act, and therefore the Landlord's application with respect to the security deposit is dismissed.

Section 45 of the Act provides for the only ways a tenant can end a tenancy. Section 45(3) of the Act provides that a tenant may end a tenancy on a date that is after the date the landlord receives the notice if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant give written notice of the failure. Section 45(4) of the Act requires such notice to comply with the requirements of Section 52 of the Act.

Section 52 of the Act states that in order for a notice to end tenancy to be effective, it must be in writing and must be signed and dated by the party giving the notice. It must also state the effective date of the notice and give the address of the rental unit. In this case, I find that the Tenants' notice did not comply with Section 52 of the Act because the notice was not in writing and was not signed by the Tenants. Therefore, I find that it was not an effective notice to end the tenancy.

I find that the Landlord is entitled to one month's loss of revenue and grant his application in the amount of **$1,100.00**.

The Landlord has been partially successful in his Application and I find that he is entitled to recover the **$50.00** filing fee from the Tenants.

The Landlord has established a total monetary award of **$1,150.00** against the Tenants.

Set-off of Awards:

I hereby set off the Landlord's monetary award against the Tenants' monetary award and provide the Tenants with a Monetary Order in the amount of **$600.00** for service upon the Landlord.

Conclusion

I hereby provide the Tenants with a Monetary Order in the amount of **$600.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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: July 16, 2013

Residential Tenancy Branch