Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, ERP, FF

Introduction

This hearing was scheduled in response to an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlords to comply with the Act, Regulation or tenancy agreement / an order instructing the landlords to make emergency repairs for health or safety reasons / and recovery of the filing fee.

Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenants are entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is understood to be a heritage house. There is no written tenancy agreement in evidence for the month-to-month tenancy which began on April 01, 2014. Monthly rent of $980.00 is due and payable in advance on the first day of each month, and a security deposit of $490.00 was collected. There is no move-in condition inspection report in evidence.

By way of voice mail message on or about May 01, 2014, the tenants gave notice to end tenancy effective May 31, 2014. In summary, the tenants claim that the indoor air quality within the unit had a negative impact in particular on tenant "ARH's" health, such that the only reasonable course of action was to find other accommodation. Compensation and orders sought by the tenants arise directly out of these claims. There is no move-out condition inspection report in evidence.

By way of email dated May 29, 2014, the tenants provided the landlords with a forwarding address for purposes of the repayment of their security deposit. The security deposit was subsequently repaid by cheque mailed on June 10, 2014.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, forms and more can be accessed via the website: www.rto.gov.bc.ca

As the tenancy ended subsequent to the tenants' filing of their application, I consider the aspect of their application concerning orders against the landlords to be withdrawn.

Pursuant to section 63 of the Act which speaks to the **Opportunity to settle dispute**, there was some discussion during the hearing around possible settlement. However, no mutually agreeable resolution to any aspect of the dispute was able to be found.

Based on the testimony of the parties and the documentary evidence which includes, but is not limited to, emails exchanged between the parties, letters of support from friends / acquaintances of both parties, photographs, receipts, and the fungal inspection report sought and paid for by the tenants, the various remaining aspects of the tenants' claim and my findings around each are set out below.

$577.50: *cost of house inspection / fungal assessment report*

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part:

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

I find there is insufficient evidence that during the course of this tenancy the unit failed to comply "with the health, safety and housing standards required by law." Specifically, there is no related documentary evidence from an appropriately qualified provincial or local government official to support any claim to the contrary. Despite this, I find that the landlords benefited from the findings / recommendations set out in the fungal assessment report in relation to care and maintenance of the unit. However, in view of the tenants' unilateral undertaking to seek and purchase the services of a particular environmental "expert" without proper consultation or advance notice to the landlords, I

find that they have established entitlement limited to **$288.75**, or half the amount claimed.

$241.91: *air purifier*

Documentary evidence in support of the tenants' claim that the indoor air quality within the unit had a negative impact on tenant "ARH's" health, is mainly limited to letters submitted by family and / or friends and acquaintances. However, in a letter to the landlord which was intended "to provide some additional clarification of the fungal inspection report," dated June 24, 2014, from the individual who conducted an inspection of the unit and issued the report, it is stated in part as follows:

> Those with fungal sensitivities or respiratory concerns may become symptomatic when exposed to minor elevations of fungal spore counts and / or the associated mVOC's (microbial Volatile Organic Compounds / odours). Those individuals are encouraged to limit their exposure to the offending area until such a time when it can be fully remediated.

In their submission the landlords claim variously and in part as follows:

- They independently purchased a HEPA filter where they should have requested one of us. We have one and could have provided it.

- No other tenants over the last 8 years have indicated any issues with air quality in the house

- Upon initially viewing the dwelling [the tenants] were informed that it was an older house, that we intended to replace the roof and that the basement, like many older homes in the area could receive water on the floor (a sump pump is operational)

- Installation of roofing was rescheduled to when they had left the dwelling to reduce inconvenience

There is no related documentary evidence of an assessment or diagnostic nature from either a physician, or appropriately qualified provincial or local government official. While I note that the fungal inspection report was provided by an "Environmental Scientist – Owner / Eco-Impact Mould Experts," in the absence of authoritative and conclusive documentary evidence that the indoor air quality within the unit failed in

some manner to comply with the "health, safety and housing standards required by law," this aspect of the application is hereby dismissed.

$503.90: *(moving expenses: $324.90 – fuel; $29.00 – meal; $150.00 – help)*

Reasons for ending tenancy after only 2 months may or may not be limited exclusively to the health concerns described by the tenants in the application. In any event, for reasons similar to those set out immediately above, I find that this aspect of the application must be dismissed.

$1,960.00: *(2 x $980.00) full reimbursement of 2 months' rent*

The tenants effectively had possession of the unit for the entire months of April and May 2014. For reasons variously either identical or similar to those broadly set out above, this aspect of the application is hereby dismissed.

$50.00: *filing fee*

As the tenants have achieved a nominal measure of success with their application, I find that they have established entitlement limited to recovery of **$25.00**, or half the filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **$313.75** ($288.75 + $25.00). Should it be necessary, this order may be served on the landlords, filed in the Small Claims Court 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, 2014

Residential Tenancy Branch