



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, FF

Introduction

This matter dealt with an application by the tenants for a Monetary Order for compensation for the replacement value of their mattress and the reduction of rent as a result of water damage to the rental unit. All parties attended the hearing.

Issues(s) to be Decided

Are the tenants entitled to compensation and if so, how much?

Background and Evidence

The landlord accepted service of the tenants' application however testified that she was not able to access any of their electronic evidence, which consisted of a DVD containing videos and photos. It is a rule of natural justice and our own Rules of Procedure that all parties must have access to each other's evidence. In this case as the respondent was not able to access the electronic evidence I have excluded all of it and not relied upon any of it.

Based upon the evidence of the applicants I find that this tenancy started on April 1, 2013 and ended on May 1, 2014 when the tenants moved out. Rent was \$ 1,000.00 per month payable in advance on the 1st day of each month. The tenants paid a security and pet deposit totaling \$ 1,095.00 on April 1, 2013.

The applicants testified that on March 23, 2014 they were cleaning and discovered when they moved their bed from the wall that it was wet and moldy and that the wall behind was wet. They inspected it carefully, tested with paper towels and determined that water was clearly emanating from the exterior wall and oozing out from under the floorboard. The applicants notified the landlord in writing of this problem the same or next day. The landlord attended the unit on March 25, 2014 cleaned the walls and

denied any responsibility for the problem. The applicants contacted several cleaning companies commencing on April 12, 2014 and determined that the mattress was not salvageable. They replaced it with a new one costing \$ 1,294.39 in Canadian dollars which they only began using in their new rental unit. Their original mattress set cost \$ 1,454.88 about two and one half years ago. They claimed that they were not able to sleep in the bedroom because of the mould infestation in their bed. They claimed that their rent ought to be reduced by one third because of the area of the house from March 24 through April 30, 2014. The applicants are also claiming for the recovery of \$ 75.61 representing the disposal fee for their mattress. The applicants say the respondent is at fault because she had not cleaned the gutters for at least one year. They further testified that they inspected the roof and house and postulated that water must be leaking between the flashing and the roof, the roof was spongy, and that the exterior kitchen wall was rotten from water damage which evidenced capillary action, all proving that the water in their unit must have occurred because of the landlord's neglect.

The landlord testified that she responded to the applicants' notice of the water problem within 48 hours. She testified that she inspected the unit and was surprised to find mostly dirt and dog hair on the wall between where the applicants had placed their bed. She did find mould on the bed. The landlord cleaned the wall with soap and water but could not find any source of moisture. The landlord postulated that the moisture was generated by the applicants' body heat because their bed was placed directly on the floor against the wall and not ventilated as recommended by Health Canada. The landlord claims that the tenants/applicants are not entitled to any compensation. The landlord testified that she regularly cleaned the gutters and maintained the house.

Analysis

Having assessed all of the evidence from all of the parties I find that the landlord's explanation that the moisture in the unit was caused solely by the tenants' mattress placement as not logical. Although it's clear from the landlord's evidence and photos that the tenants may not have regularly cleaned the bedroom, I am not satisfied that the degree of moisture that caused the damage to their bed was created only by the placement of their bed. I accept the tenants' evidence that they personally observed moisture coming through the exterior walls into their unit and that that moisture likely damaged their bed. I am not satisfied that they have proven that the landlord was negligent in any way. I find that their theories as to the cause of the moisture were mere speculation. However I do find that upon the commencement of the tenancy there was an implied term incorporated into the tenancy agreement that the unit would be "reasonably fit for the purpose of habitation" throughout the tenancy. I find that the landlord has breached that implied term as excess moisture had entered the bedroom resulting in the damage to the tenants' bed causing damage to the tenants' bed. I find that such damage or loss was foreseeable at the time of entering into the tenancy.

I find that the tenants failed to mitigate their loss by taking immediate steps to rectify the problem by obtaining a new bed and replacing the old one. They only purchased a new bed at the end of the tenancy and began using it in their new residence. I find that it was

their own personal choice not to use the bedroom and as they have not adduced any evidence that the bedroom was not useable, I have dismissed their claim for any reduction in rent during their tenancy.

Policy Guideline #16 of the Residential Tenancy Guidelines states:

Claims in Damages

Claims for Breach of Contract

The purpose of damages is to put the person who suffered the loss in the same position as if the contract had been carried out. It is up to the person claiming to prove that the other party breached the contract and that the **loss resulted from the breach**. The loss must be a consequence that the parties, at the time the contract was entered into, could reasonably have expected would occur if the contract was breached. Losses that are very unexpected are normally not recoverable. **The party making the claim must also show that he/she took reasonable steps to ensure that the loss could not have been prevented, and is as low as reasonably possible.**

Types of Damages

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award “nominal damages”, which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right

I find that although the landlord has breached the implied term of “fitness” the tenants likely aggravated or contributed to the cause of the loss they suffered by failing to regularly clean the bedroom and by the placement of the bed on the floor against the wall. Had the tenants not placed their bed on the floor, against the wall, and cleaned the bedroom more frequently they would likely have noticed the problem sooner and likely not have suffered any or so great a loss. I therefore find that they have equally contributed to the causation of the loss through their own neglect. I find that their contribution to the causation loss is fifty per cent. Accordingly I find the tenants are entitled to one half of their claim for the replacement of a mattress at \$ 1,294.39 and the disposal fee of \$ 75.61 for a total of **\$ 685.00**. I have not made any Order with respect to the security deposit as the landlord has made a claim against it (in file 252495) pending the out come of that decision.

Conclusion

In summary I ordered that the respondent pay to the applicants the sum of \$ 685.00 in respect of this claim plus the sum of \$ 50.00 in respect of the filing fee for a total of \$ 735.00. I grant the applicants a Monetary Order in the amount of **\$ 735.00** and a copy of it must be served on the respondent. If the amount is not paid, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

Dated: July 28, 2014

Residential Tenancy Branch

