Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by one of the Tenants on January 5, 2016. The Tenant filed seeking a $3,915.00 Monetary Order for money owed or compensation for damage or loss under the *Act,* regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord, and each Co-Tenant. Each person gave affirmed testimony. As stated above, the application for Dispute Resolution listed only one applicant tenant and both Co-Tenants appeared at the hearing and provided affirmed submissions. Therefore, for the remainder of this decision terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each party confirmed receipt the receipt of each other's evidence submissions. No issues regarding service or receipt were raised. As such, I accepted the Landlord's and the Tenant's submissions as evidence for these proceedings.

Each person was provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants proven entitlement to monetary compensation?

Background and Evidence

The Tenants began occupying the rental property as of May 15, 2011 on a one year fixed term tenancy agreement. The Tenants entered into consecutive one year tenancy agreements with the final agreement beginning on June 1, 2014 and was scheduled to end on May 31, 2015.

The tenancy agreement submitted into evidence by the Landlord had a clerical error on it as it indicated the tenancy started on June 1, 2013 and continued for one year ending May 31, 2015.

Rent was payable on the first of each month in the amount of $1,400.00 and was subsequently raised to $1,450.00 per month. On April 21, 2011 the Tenants paid $700.00 as the pet deposit plus $700.00 as the security deposit. Both parties were represented and signed the move in condition inspection report form on May 15, 2011 and the move out condition inspection report form on April 27, 2015. The rental unit was described as an older (possibly 1970's) half duplex with electric baseboard heat.

On February 10, 2015 the Tenants gave written notice to end their tenancy effective April 30, 2015; one month prior to the end of their fixed term. The Tenants provided the Landlord with their forwarding address during the move out inspection and the Landlord refunded the Tenants' security and pet deposits in full on April 27, 2015.

The Tenants now seek $3,915.00 as per the itemized listed submitted into evidence which was comprised of: bedroom furniture; personal items; clothing items; disposal fees; November 2014 rent; December 2014 rent; and 1/5 of January 2015 rent.

The Tenants testified that starting from the very first winter of 2011/2012 that they resided in the rental unit they had problems with mold. They argued the problems only occurred during the winter months and were present every winter for the entire four years they resided in the unit.

The Tenants asserted the windows in the rental unit did not close properly and despite promises from the Landlord to change the widows, only the kitchen window was replaced during their tenancy. The Tenants submitted there was moisture in the attic that dripped onto their possessions and then they began to notice mold in the attic, on the windows, in corners on the walls, on the ceiling, and in the closet. They testified the Landlord even had to replace the drywall on the wall and ceiling in the master bedroom closet.

The Tenants testified that they purchased a de-humidifier and a portable oil/electric heater used to try and dry out the rental unit.

The Tenants stated they informed the Landlord of the mold problem when they called a few times. They stated every time they called the Landlord would send a maintenance person and they were told numerous things such as: there was not enough venting; a new roof was needed; there were not enough roof vents so holes were put in the roof; and one time insulation was covering the vents.

The Tenants submitted they tried to resolve the issue with the Landlord doing the repairs and each year the mold would return. They had knowledge that the person in the other side of the duplex had called an environmental by-law officer for an inspection and the Tenant's daughter had allowed that inspector to look at their rental unit. They did not pursue that type of action and did not know the exact date when that inspection took place. The Tenants stated that they did not seek a remedy through the Residential Tenancy Branch (RTB) sooner as they were told they had up to two years after the tenancy ended to bring forth a claim. They also indicated the Landlords were nice people always coming to investigate and conduct repairs each time the Tenants called with their concerns.

In support of their application for Dispute Resolution the Tenants submitted electronic copies of photographs and a one page list of items with the amounts and items they sought compensation for.

The Landlord testified that she has been the property manager of this rental property since 2004. The Tenant who resided in the property at that time continued their tenancy until 2007 and there were no mold issues during that time. The owner then occupied the property on a part time basis from 2007 to 2010 while he conducted renovation. The unit was re-rent from 2010 to 2011 to a single mother and there were no complaints of mold during that tenancy. In May 2011 these Tenants entered into their first fixed term tenancy and every year they willingly entered into another fixed term tenancy. The unit was re-rented on June 15, 2015 and was sold February 2016 and during that time there were no complaints of mold.

The Landlord argued the Tenants were never at the rental unit to meet with her when she attended to investigate the allegations of mold. Rather, the Tenant's teenage daughter was the only person who was present during those inspections. The Landlord submitted the rental unit had a large amount of furniture especially in the master bedroom. She stated she informed the Tenants on several occasions that they needed

to ensure the furniture was not tight up against the walls and provide proper air circulation.

The Landlord confirmed they removed the drywall on the wall and ceiling of the master bedroom closet. She argued that when that drywall was removed the black substance was only on the side of the drywall that faced into the rental unit closet and was not behind the drywall (the side that faced outdoors). The Tenants did not dispute this submission.

The Landlord argued that the black substance on the inside of the drywall was proof it was not mold and was in fact mildew caused by the excessive amount of moisture being created in the room. She argued the black substance around the windows was also mildew and not mold.

The Landlord noted the Tenants kept the master bedroom and rental unit way too hot. They had the baseboard heaters turned up high and in addition they used the portable oil/electric heater which created excessive heat and moisture. She asserted the Tenants never removed their furniture from against the walls, and continued to use the extra heater. The Landlord noted that once she received the Tenant's application for Dispute Resolution in January she immediately contacted their existing tenant and obtained a written statement to confirm they were not problems of mold in the rental unit.

The Landlord submitted evidence including receipts for repair work conducted to the roof and the installation of vents. She indicated that she made a choice not to pursue the Tenants for liquidated damages for breach of their fixed term tenancy or for the payment of May 2015 rent; despite the unit not being re-rented until June 2015. She noted that the Tenants had left the rental unit in good condition and they were unhappy to leave the municipality so she decided to pick her battles and not pursue them for those losses.

The Landlord confirmed the municipal by-law officers conducted an inspection on the other side of the duplex and after their work the rental unit passed the inspection.

In closing, the male Tenant stated he recalled meeting with this property manager on two occasions. The female Tenant confirmed their teenage daughter had met with the property manager and maintenance people at times when the Tenants were at work. They asserted the additional heater was used to kill the moisture not create more.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* requires a landlord to 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 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events. In the absence of any evidence to support their version of events or to doubt the credibility of the parties, the party making the claim would fail to meet this burden.

I accept the undisputed evidence that each winter these Tenants had occupied the rental unit there was an increased amount of moisture and the presence of a black substance on the walls, ceilings, and around the windows, inside the rental unit. That being said, I find the Tenants submitted insufficient evidence to prove the black substance was in fact mold and was caused by inaction or improper maintenance required by the Landlord.

By their own submissions the Tenants confirmed that each time they called and reported the presence of the black substance to the Landlord, the Landlord acted

immediately by having someone attend the rental unit and conduct maintenance to try and alleviate the problem. In addition, the undisputed evidence was the black substance was only located on the interior side of the drywall and may have been mildew rather than mold. Therefore I find, pursuant to section 62 of the *Act,* there was insufficient evidence to prove the Landlord breached section 32 of the *Act.*

Furthermore, I find pursuant to section 62 of the *Act,* the Tenants submitted insufficient evidence to prove they mitigated their loss as is required by section 7 of the *Act*. I make this finding in part, as there was evidence the Tenants: failed to move their possessions away from the walls, as suggested by the Landlord; failed to reduce the amount of heat inside the master bedroom and continued to use the portable heater in addition to the baseboard heater, despite the Landlord's suggestions to reduce the heart; and failed to seek a remedy through dispute resolution until 5 years after the presence of the black substance first appeared. While I accept the Tenants have two years after the end of the tenancy to bring a claim forward; they were required by section 7 of the *Act* to do what was reasonable to minimize their losses. Continuing to live in such conditions every winter for 4 years, having the black substance remain on their possessions for that length of time and then throwing them out when they moved out is not considered a reasonable manner in which to minimize their losses. Accordingly, I dismiss the Tenant's application in its entirety, without leave to reapply.

Conclusion

The Tenant was not successful with their application and it was dismissed, without leave to reapply.

This decision is final, legally binding, and 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: August 23, 2016

Residential Tenancy Branch