



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding High Water Ventures Ltd.
and [tenant name suppressed to protect privacy]

AMENDED DECISION

Dispute Codes MNSD

Introduction

This was an application by the tenants for compensation resulting from an infestation of mould.

Issue(s) to be Decided

Is there jurisdiction under the Residential Tenancy Act for this matter?
Have the tenants proven their loss and if so for what amount?

Preliminary Matter:

The landlords allege that because the rental unit is situated on the Fraser River over which the federal government has exclusive jurisdiction, the Residential Tenancy Act has no application regarding this tenancy pursuant to Section 91 of the Constitution Act. The landlords in their original submission tendered a copy of their head lease with the Fraser River Harbour Commission and the Constitution Act. They did submit late evidence with some more materials therein but because they failed to provide the tenants with copies of that evidence, I have excluded it. The landlords had not produced any specific statutory law persuading me that the Residential Tenancy Act does not apply. It is the landlords who raised this objection and it is they who have the burden to prove the lack of jurisdiction. I find they have failed to do so and accordingly I find that this tenancy is subject to the Residential Tenancy Act of BC.

Background and Evidence

The tenants testified that the month to month tenancy began in June of 2009. Rent was \$ 750.00 per month. The tenants claimed that in 2012 they started to notice a smell of mould. They claim they spoke to one of the landlords who denied its existence. The tenants claim that in 2013 they started to feel unwell with symptoms of: fatigue, weakness, poor balance and weight loss. In 2014, the landlords' handyperson inspected their bathroom because of a shower leak and made some repairs of rotten wood. They mentioned mould to him and requested he inspect. He did so but found nothing. The tenants' health concerns continued. As a result they retained a mould expert in 2014 who gave them a report on or about September 8, 2014. The tenants claimed that the expert advised them that he found toxic mould spores in their bathroom. He advised them to move out immediately, professionally clean all their clothes and discard many items. The tenants gave a copy of the report to the landlords on September 9, 2014 and moved out the previous day. It took several months for the tenants to clean up and remove their belongings. They moved to a smaller unit and were required to store many of their belongings until they moved to a larger home. The tenants say they suffered physically and emotionally as a result of the mould infestation and incurred medical and other expenses.

Details of the tenants' claim:

Dry-cleaning of all their clothes	\$ 3,435.89
Medical (naturopathic) treatments and supplies	\$ 4,431.81
Storage expenses	\$ 2,046.80
Cost of laundry	\$ 186.00
Cleaning supplies	\$ 250.00
Bed frame (destroyed by mould)	\$ 289.00
Pillows	\$ 60.00
Open food packages discarded	\$ 150.00
Discarded items	\$ 50.00
Cat and dog food discarded	\$ 40.00
Potting soil replacement	\$ 20.00
Labour for cleaning (Brenda)	\$ 1,575.00
Labour for cleaning (Randy)	\$ 300.00
Stress/Pain and suffering	\$ 3,000.00
Rent reduction (\$ 500 per month from June 1, 2013 –September 30, 2014)	\$ 7,500.00

The landlords testified that they had not been advised of any potential mould issue until September 8, 2014 when the tenants advised them they had retained a mould expert.

Their records indicate that their handyman reported that he attended the unit in the spring of 2014 to do repairs that the tenants mentioned mould but none could be found. The landlords testified that as soon as they received the expert's report on September 9, 2014 they called him to discuss it. He told them the unit needed professional remediation that mould exists everywhere in BC and can be caused by a number of factors such as heat humidity and cleanliness or a lack thereof. He advised that only the bathroom contained toxic mould but the level of the infestation was moderate not severe. The tenants had already effectively moved out. The landlords refunded their rent for September and did not charge any rent until the tenants completely vacated all their belongings by December of 2014. The landlords submit they did not ignore the mould problem but were not aware of it until September 2014. They say they did nothing wrong and request a dismissal of the claim.

Analysis

To claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the claimant must satisfy these components:

- Proof that the damage or loss exists,
- Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
- Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

Given the scope of the claims the tenants allege, one would expect that the tenants would have sent many notices to the landlords advising them of the problems and demanding reparations. There were no such letters, emails or communications produced by the tenants. I found the landlords' testimony straightforward and credible. I accept and believe them that they were not advised that mould might be a problem until September 8, 2014. I find that the tenants may have mentioned it before but did not actively complain about mould until September 8, 2014. The tenants had not produced any evidence which could point to any neglect of duties or breach of the Act of the landlords. As their expert stated mould has many causes. They did not produce the expert mould report or any medical evidence specifically indicating what kind of mould was found, the cause of the mould, how it impacted their lives, what was required of

them, or any causal connection between the mould and any medical ailment they claimed for or supporting the rest of their claims. Furthermore the tenants did not give the landlords adequate time to apprise themselves with the situation or to make repairs as required by section 7(2) of the Act.

For all of the above reasons I find that the tenants failed on the balance of probabilities to prove that the mould infestation was caused by any fault, neglect or statutory breach of the landlords, that there was any connection between the mould and their alleged medical ailments or that any of the expenses they are claiming resulted directly from the mould or the fault of the landlords. Furthermore the tenants took matters into their own hands by ending the tenancy. All in all I find that the tenants failed to prove that they are entitled to recover any of the claims they have made.

Conclusion

I have dismissed all of the tenants' claims. There will not be any recovery of the filing fee.

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: November 21, 2016

This decision/order is amended pursuant to section 78(1) of the Residential Tenancy Act this 22 day of November, 2016

Residential Tenancy Branch