



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing, and the landlord was accompanied by a person for support. The landlord and one of the tenants gave affirmed testimony and the parties were given the opportunity to question each other. However, considering the lengthy hearing and testimony, no time was permitted for closing submissions.

The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for compensation related to mice in the rental unit, cleaning, and a leaking roof?

Background and Evidence

The tenant testified that this fixed term tenancy began on July 18, 2021 and was to revert to a month-to-month tenancy after July 31, 2022. However, the tenants vacated the rental unit on October 25, 2021. Rent in the amount of \$2,700.00 was payable on

the 1st day of each month which was pro-rated for the first partial month to \$1,219.00, and there are no rental arrears to the end of October, 2021. On July 17, 2021 the landlord collected a security deposit from the tenants in the amount of \$1,350.00, which has been returned in full to the tenants. The rental unit is the upper floor of a duplex, and other tenants resided in the lower level. Copies of the move-in and move-out condition inspection reports have also been provided for this hearing.

The tenant further testified that on October 22, 2021 the tenant gave notice to the landlord to end the tenancy, which was preceded by at least 4 or 5 letters, indicating that the property did not meet the minimum standard, and that the tenants were looking for alternative housing. The landlord didn't reply to any of the tenants' letters.

The tenants found mouse droppings on the couch on July 28, 2021 and notified the landlord, who suggested that the tenants retain a pest control person from across the ally. The pest control person arrived the next day and found extensive evidence of mouse presence, such as feces from insulation that had been pulled out under the kitchen cabinets, as well as behind the washer and dryer, in the broom closet and behind the fridge. The pest control person said that he was surprised that the landlord didn't know about it and had been a long-term problem. The tenant sent an email to the landlord with a pdf attachment about move-in issues.

The tenant from the lower level did some partial cleaning under the sink and washer and dryer at the landlord's request, and the tenant installed screening. The pest control person left 3 glue traps in the broom closet and said he would return to install more traps, and the landlord paid him with a case of beer in the ally. The pest control person didn't return any of the tenants' calls or text messages.

The rental unit was not clean at the beginning of the tenancy and the closet pulls were installed without nuts. The landlord provided the nuts and the tenant put them on the pulls. However, the tenants' email dated July 29, 2021 asks for professional cleaning and received no response from the landlord.

The tenant was away from July 30 to August 2, 2021 and his wife was unpacking and found extensive urine and droppings in the tenants' packed boxes. The tenant's wife began purchasing totes and garbage cans with lids, and receipts have been provided as evidence for this hearing. The tenants moved their boxed items into plastic totes and lived out of those until they moved out of the rental unit.

The tenants contacted another pest control company to complete an inspection on August 3, 2021, and they provided the tenants with a quote. They noted a number of

exterior entry points but could not guarantee success due to having a lower unit unless it was also treated.

On August 5, 2021 the tenants hired cleaners who pulled out appliances and found a large amount of feces inside the washer, dryer, fridge and oven, which they could not clean. A receipt has been provided for this hearing.

On August 9 the tenant's wife had a doctor appointment for stress of living with the rodents. More feces were found after entry points were closed off, and the tenant's laptop was chewed overnight and one was caught in a trap. The tenant sent another email to the landlord on August 10 indicating that the tenants had spent \$746.00 to date on totes, garbage cans and cleaners and asked for a reduction in rent with a request to respond by August 13, 2021, but the landlord didn't respond. Other receipts have also been provided for this hearing for additional traps, filters and glue traps. The tenant's wife stayed at a friend's house on August 10 and the tenant ordered a video camera to track movement at night. Images have been provided for this hearing, which were sent to the landlord. Due to the stress that the tenant's wife experienced, she applied for a deferral of a final exam at UBC.

On September 4 the tenants noticed a bad leak in the kitchen; there was a puddle on the floor and the light fixture was full of water. The tenant sent a letter to the landlord the next day, and a contractor was going to attend but didn't show up until September 6. He installed tarps on the roof and said it could not be repaired correctly and needed to be replaced. On September 14 it rained again and filled the light fixture again. The tenant notified the landlord, who replied on September 15 coordinating roof repair and said the contractor did not need to access the rental suite. The contractor did work, but the problem was not solved and it was not repaired while the tenants were there.

The tenants' unit was treated first by the pest control company on August 24, and the landlord's evidence states that the lower level was treated on October 22, 2021. Mice were present from the beginning to the end of the tenancy, and the tenants cleaned at move-out and the landlord found droppings after the tenants vacated.

On September 20 the tenant sent another letter to the landlord stating that the house was not up to standard and was in violation of the by-laws, and that there was still evidence of mice, the roof was leaking badly and the property was not fit for occupancy. The letter also included sections of the *Residential Tenancy Act* and specified that it had disrupted the tenants' lives and ability to earn a living. Timelines were also expected, but the tenants received no response from the landlord.

On October 15 the tenants began to move out having found a place to live with a friend for 6 months, and continued to find leaks and more leaks in the main bathroom ceiling.

On October 18 the landlord showed up at the rental unit with an unknown man who entered without permission and without introducing himself. It was very uncomfortable for the tenant's wife. The tenant was away until the 23rd and was also not comfortable with them returning without the tenant being there.

On October 20 the landlord sent an email to the tenants advising a few things: it looked like the tenants had moved out, the roof was repaired, an inspection proved there were no more leaks. It also stated that the landlord had discussed the matters with a lawyer and it appeared that the tenants were setting up the landlord to lose a month of rent due to deliberately delaying giving notice to vacate based on false allegations of material breaches, which was not a wise tactic. It also stated that it was actionable under the *Residential Tenancy Act* and it would be best if the tenants gave notice ASAP to mitigate the landlord's loss or the landlord would claim loss of rental income, especially giving notice at the end of the month and not paying November's rent - it would be seen as an attempt to manipulate to an Arbitrator.

On October 21 the tenants scheduled an appointment for pest control to attend the next day. The tenant's wife called to reschedule.

The tenants gave a notice to the landlord on October 22 stating that the tenants would be moving out effective October 31, and the landlord re-listed the property on Craigslist that day. The tenants' final belongings were removed on October 24, and there was still water in the office light fixture. The next day a professional cleaner arrived at the tenants' request and the condition inspection was done. There were fresh feces on the floor after the cleaning and before the inspection began. The landlord also noticed that the ceiling was not painted in the office and there were visible holes and mold on the ceiling.

On October 27 the landlord attempted to force the end of the tenancy by giving the tenants 2 documents entitled Final Opportunity to Schedule a Condition Inspection, prior to notifying the landlord that the tenants were moving out.

The tenants have provided a Monetary Order Worksheet setting out the following claims, totaling \$11,679.99:

- \$1,219.00 for repayment of July rent;
- \$2,700.00 for repayment of August rent;

- \$259.73 for storage totes;
- \$146.65 for storage totes;
- \$94.04 for storage totes;
- \$259.84 for feces cleaning costs;
- \$246.05 for more storage totes;
- \$18.80 for additional mouse traps;
- \$65.12 for particulate air filters;
- \$30.06 for glue board mouse traps;
- \$2,700.00 for repayment of September rent;
- \$2,700.00 for repayment of October rent; and
- \$1,240.70 for moving expenses.

The landlord testified that on July 17, 2021 the tenants responded to the landlord's advertisement and the parties made an appointment to view the rental unit. After that, the tenants said they wanted it right away. The landlord had a few applications and the tenants asked how they could get moved in right away, but the advertisement said it was available on August 1, 2021.

The parties exchanged emails and the landlord responded, however the landlord did not respond to the tenants' letters.

On July 29, which was 10 days after the tenancy agreement was signed, the tenant (BC) texted notifying the landlord of a mouse problem and droppings on the couch. The landlord responded within 15 minutes or so saying that the landlord hadn't heard about mice from previous tenants or the tenant in the lower level of the rental property. The landlord asked the tenant to contact a fellow from across the ally at the phone number on his truck to take care of the problem, and the landlord would talk to him the next day. The tenant was fine with that and contacted him. He was working that day but asked if he could attend after work and he did. He advised that there was evidence of mice under the washer and dryer, and there may have been an entrance at the pipe under the sink. He suggested getting metal mesh to cover it, clean up behind the washer and dryer and under the sink with bleach, and wait for a couple of days until the smell is gone and he'd return to check. Rodents won't enter if they smell bleach. The landlord got the mesh and the tenant in the lower level suite put it under the sink. The tenant in this matter also helped by putting some in the furnace room. The landlord asked the pest control person about payment, but he said there was not charge for a neighbour,

and the landlord bought him some liquor. It was easier for the tenant to make the booking with the neighbour than for the landlord to coordinate it.

On August 1 the tenant sent the landlord a message stating that the pest control person neighbour didn't show up so they hired another pest control company. The landlord wasn't sure that the landlord could make it there for that appointment and called the tenant, but the tenant didn't answer the landlord's call. The tenant did ask if the invoice should be deducted from the rent, but the landlord said that the landlord would pay it directly so the tenants didn't have to pay for it.

An Invoice was sent to the landlord with a recommendation and showing what work was done. A copy of their report dated August 3 has been provided for this hearing. The tenant in the lower level of the rental property had lived there for over 2 years prior to this tenancy and didn't have any mice. The recommendation from the pest control company was to service the lower level as well, but that tenant didn't want it serviced.

Every time the tenants had a problem or issue, the landlord responded right away and paid for pest control, but did not respond to the tenants' written letters. The second visit from the pest control company said that activity was noted by the tenants and seen on camera which was a week after the first visit. The recommendation was to eliminate possible food sources which should be placed in hard plastic or glass containers.

A wind storm caused the roof to leak and the landlord told the tenant that due to COVID the contractor wouldn't need to go inside because it's a flat roof. The roof was repaired on September 8.

The third visit of the pest control company was on September 14 and the report states that activity was noted by the tenants but there was no activity on the traps.

On September 17 the tenants sent a video of a mouse to the landlord and the landlord responded right away stating that the landlord had ordered another visit by the pest control company. The same day the landlord told the tenant that the roofer would cover the roof with tarps because they couldn't repair it and needed to wait for more rain to see if there were anymore leaks. A typing error exists in the message stating that the roofer covered it with turf, but meant "tarps."

The 4th visit from the pest control company found no activity of rodents, but the tenant insisted. The landlord told the pest control company that they could treat the entire house and contacted the downstairs tenant advising that the whole house would be inspected. On September 21 the landlord received their report stating that there

appeared to be 1 mouse from a gap in a wall which they sealed. Also provided for this hearing is a statement from the downstairs tenant dated September 27 confirming there were no mice.

On October 15 the downstairs tenants notified the landlord that they believed the upstairs tenants were moving out. The landlord called the tenant who said they were not moving. The landlord wanted to inspect to see if they were still living there and to inspect the leak. No leaks were noticed and the house was totally empty on October 18.

The tenants had arranged October 22 for treatment and the downstairs tenant was notified. The landlord attended and waited 3 hours but no one showed up. The downstairs tenant asked about it and the landlord called the pest control company who advised that someone had cancelled the appointment. The landlord was not notified of that, and told the downstairs tenant that the treatment was cancelled. The tenants made appointments and then moved out knowing about the appointments and cancelled them. Based on what the downstairs tenant told the landlord, the tenants actually moved out on October 15. The landlord gave the notices to inspect believing that the tenants had vacated.

The landlord hired professionals and the tenants were still not satisfied. The landlord has provided 3 invoices for the roof repairs and several from the pest control company, and the landlord paid them all. The roof repairs were complete after the tenants moved out and the weather was better. The landlord told the tenant it would have been good to have received notice to vacate so the house would be re-rented and not left empty.

The rental unit was re-rented on November 1 and new tenants have been there since with no mice or any other problems. Perhaps the mice came from the tenants' boxes; there were no mice in either suite until 10 days after the tenants moved in. Every time an inspector arrived there was no evidence of that at all; only in the tenants' videos. There is no way 1 mouse can cause that many problems, and the pest control people couldn't do anything more, and the landlord did the best that the landlord could.

The landlord also refers to the tenants' evidence regarding deferral of exams with UBC which states that the tenants had been evicted from their previous rental, although the landlord does not have any knowledge of the circumstances or the reason. It states that the tenants were given an eviction notice on June 23 and signed this tenancy agreement on July 18. It also states that they were trying to get out of the 1 year lease, however if the tenants had changed their minds or work had changed, the landlord would have been happy to end the lease. It only took 4 days to re-rent.

Analysis

Where a party makes a claim for damage or loss, the onus is on the claiming party to satisfy the 4 part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material, and I accept that there were mice in the rental unit causing distress to the tenants. Considering the testimony of both parties I am also satisfied that the tenants did what was reasonable to mitigate by contacting pest control personnel and notifying the landlord.

The tenant testified that and the tenants started to move in on July 18 finishing on July 26 and droppings were first noticed on the couch on July 28, 2021. He also testified that he was away July 30 to August 2 and his wife was unpacking and found extensive urine and droppings in the packed boxes. The landlord suggests that the mice came from the tenants' boxes given that there were no mice in the lower level suite, there have been no mice since, and the only evidence after visits from the pest control company was the camera images provided by the tenants. Although the landlord didn't respond to the tenants' written letters, the landlord did respond to text messages and did hire professionals. The tenants' photographs show that prior to purchasing the totes, the tenants' belongings were in cardboard boxes and bags, and some boxes had no lids.

The tenant did not give any testimony about where the tenants' boxes had been prior to moving into the rental unit. There is no evidence of where the cardboard boxes remained from June 23 to July 18, 2021. I also accept the landlord's testimony that there were no mice in either suite until 10 days after the tenants moved in. In the circumstances I agree with the landlord that it is very possible that the mice were in the boxes that the tenants brought into the rental unit.

I am not satisfied that the tenants have proven on a balance of probabilities that any damage or loss suffered by mice in the rental unit was as a result of the landlord's failure to comply with the *Act* or the tenancy agreement.

With respect to the leaking roof, although a landlord is required to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant, the tenants are still required to satisfy the 4-part test. The tenant testified that the leaks were first noticed on September 4, 2021 and the landlord sent contractors but it was not fully repaired while the tenants lived there. The landlord testified that tarps were placed over the roof on September 8, 2021 and has provided evidence of 3 paid invoices. Again, I do not see how the landlord has failed to comply with the *Act* or the tenancy agreement.

The tenants' photographs also depict a rental unit that was not entirely cleaned, however the move-in condition inspection report does not mention anything about cleaning being required. The tenants have provided evidence of paying \$259.84 for cleaning on August 5, 2021, which was 17 days after the tenancy began. It ought to have been thoroughly cleaned prior to the commencement of the tenancy, and I find that the tenants have established a claim of \$259.84 for cleaning.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

The balance of the tenants' application is dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$359.84.

This order is final and binding and may be enforced.

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: August 09, 2022

Residential Tenancy Branch