



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Dispute Codes: MNDC, MND, FF

Introduction

This matter dealt with an application by the Landlord for a monetary order for damages to the rental unit and to recover the filing fee for this proceeding. The Tenants applied for a monetary order for compensation for damage or loss under the Act or tenancy agreement and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation and if so, how much?
2. Are the Tenants entitled to compensation and if so, how much?

Background and Evidence

This fixed term tenancy started on April 18, 2008 and was to expire April 30, 2009, however, it ended on November 30, 2008 when the Tenants moved out. Rent was \$2,000.00 per month.

The Landlord's claim:

The Landlord said that on June 29, 2008, he was advised by the Tenants of a water leak in the rental unit. The Landlord claimed the leak was caused by the Tenants when they improperly installed a water filtration system under the kitchen sink. As a result of the leak, the Landlord said the engineered wood flooring in the rental unit was damaged and had to be replaced. The Landlord also claimed that the water leaked into 2 other suites in the strata property causing water damages estimated at approximately \$100,000.00. The Landlord said under the Strata Rules, the owner of the rental unit was responsible for reimbursing the Strata their insurance deductible of \$1,000.00. As a result, the Landlord sought to be indemnified that amount by the Tenants. In support of his claim, the Landlord provided a document summarizing the insurance policy held by the Strata and the deductible related to each type of claim.

The Tenants argued that they were not responsible for the water leak in the rental unit because they had installed the filtration system correctly. They claimed the problem was a faulty water valve on the filtration system. In any event, the Tenants also argued that they removed the water right away and that the only damage was "cupping" along the edges. The Tenants also denied that the water leak caused water damage in other

suites. In particular, they claimed an inspection of one of the lower suites (#610) was done the same day by the Strata's maintenance person and he only found a little water in the furnace room which had a drain and no damage. The Tenants said in mid-July, they went through the other unit (#510) during an open house and saw no evidence of water damage.

The Tenants said they did not hear anything about water damage to the 2 lower suites until much later. The Tenants claim that on September 3, 2008, they were advised by a restoration company that water was still leaking from their sink into the suite below. The Tenants said when they investigated, they discovered the leak was coming from the master shower as water had made its way through a breach in the grout and under the tub. Consequently, the Tenants suggested that any water damage to the lower suites may have been caused by the leak in the bathroom which they were not responsible for. The Tenants claimed that they were advised that the repairs for each of the 3 strata units was approximately \$16,000.00 each.

The Tenants said they asked the Landlord's insurer on September 26, 2008 if the Landlord had a rider on its policy such that the insurer would pay any deductible claimed against the Landlord by a Strata. The Tenants said neither the Landlord or its insurer responded to them. The Tenants claim that they have never been given a copy of any demand for payment to the Landlord for the Strata's deductible and have never seen evidence that the Landlord paid it as alleged.

The Tenants' Claim:

The Tenants said the Landlord advised them that although only portions of the floor in the rental unit were damaged, replacement wood could not be found to match the other section and therefore the entire floor had to be replaced. The Tenants said the Landlord wanted to do the whole floor at once and told them that they could not be there during that time. The Tenants argued that the Landlord should have accommodated their wish to stay in the rental unit while the floor was replaced room by room. The Tenants also said that they believed water from the bathroom had seeped under the master bedroom floor and on September 30, 2008 they asked the Landlord to remove a section of it to inspect it for mould. The Tenants said they did not believe there was mold in the unit but wanted to be sure because one of them was recovering from surgery 6 earlier. When the Landlord said he would not do so, the Tenants gave written notice on October 14, 2008 that they were ending the tenancy effective November 30, 2008.

The Tenants said due to the low vacancy rate in Victoria, they had to rent a new residence for November 1, 2008 and as a result incurred an additional rent expense of \$2,200.00 for November, 2008. The Tenants sought to be compensated for this amount by the Landlord. The Tenants also sought to be compensated the increased rental rate

of \$200.00 for the unexpired 5 month term of their tenancy agreement with the Landlord and moving expenses of \$1,654.80.

The Landlord claimed that the Tenants decided to end the tenancy and the Landlords did not pursue them for damages for ending the tenancy early. The Landlord argued that it would not have been economical to repair the rental unit floor room by room while the Tenants were still living there. In any event, the Landlord claimed the Tenants decided to end the tenancy and therefore the Landlord should not be responsible for compensating the Tenants.

Analysis

The Landlord's Claim:

I find there is insufficient evidence that the water leak from the kitchen sink in the rental unit on June 29, 2008 caused damages to lower units in the Strata property. I find there is sufficient evidence that the leak caused damages to the rental unit floor. Section 32 of the Act places the financial responsibility to repair damages caused by them whether deliberate or not. There is insufficient evidence, however, as to what the actual value of that damage to the rental unit was. Furthermore, there is no evidence that the Landlord had to pay a \$1,000.00 deductible on behalf of the Strata or that it was, in fact, paid. Consequently, the Landlord's application for this relief is dismissed.

The Tenants' Claim:

Section 7 of the Act states as follows:

- (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.

Section 49 of the Act permits a Landlord to end a tenancy if repairs are required that require vacant possession, however, there is no evidence in this matter that the Landlord ended the tenancy. Section 45(3) of the Act permits a Tenant to end a tenancy early where there has been a breach of a material term of the tenancy agreement but only after the Tenant gives the Landlord written notice of the breach and the Landlord fails to correct the situation within a reasonable period of time.

There is no evidence in this matter that the Landlord breached a material term of the tenancy agreement. Section 32 of the Act puts the responsibility on the Landlord to make non-emergency repairs where they are required to make a rental unit fit for occupation. A failure of a Landlord to make repairs may entitle a Tenant to compensation for loss of use of the rental unit, however, unless the tenancy agreement is clear that this obligation is a **material term**, it does not entitle a tenant to end the

tenancy agreement. In the absence of a breach of a material term warranting the Tenants to end the tenancy, I find there are no grounds for the Tenants' application for compensation and it is dismissed.

Conclusion

The application of the Landlord is dismissed and the application of the Tenants is dismissed.