



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This matter dealt with an application by the Tenants for a monetary order for compensation for damage or loss under the Act or tenancy agreement.

Issues(s) to be Decided

1. Are the Tenants entitled to compensation for damages and if so, how much?

Background and Evidence

This tenancy started in 2005. Rent is \$1,140.00 per month plus utilities. On or about December 26, 2008, the rental unit (which is the upper portion of a townhouse) got water damage due to a leak in the roof. The Tenants said that when they returned from holidays on January 4, 2009, the carpets were damp and they could smell a strong odour of mould or mildew. The Tenants also said they pulled back the carpeting to determine the extent of the water damage and discovered that the sub-floor was also wet. The Tenants claimed that they were unable to contact the Landlords so instead they contacted the restoration company that had started restoring the townhouse unit below them and set up industrial fans.

The Tenants said the roof was replaced between January 13 and 17, 2009 but during that time, they were unable to use approximately one-half of the rental unit because they had to move furnishing so they could pull the carpets back and dry things out. The Tenants said the Landlords offered to clean the carpets and treat them with a mould killing chemical but they had reservations. The Tenants claim that other restoration companies they contacted recommended throwing the carpets out. Consequently, on January 22, 2009, the Tenants sent a letter to the Landlords asking them to replace the carpets. Instead the Tenants said, the Landlords had the restoration company clean and treat the carpets on January 22nd. However, after further discussions the Landlords agreed to replace the carpets which were installed by February 26, 2009.

The Tenants claim that on March 3, 2009 they sent a letter to the Landlords requesting a 50% rent rebate for the period December 26, 2008 to February 26, 2009 plus

compensation for their increased heating bill for that period of time. The Landlord gave the Tenants a cheque for \$606.40 based on one month's compensation instead.

The Landlords claim that the leak in the roof was caused by an unusually heavy snow fall but that in any event, the Landlords acted swiftly by trying first to patch the roof and when that failed they replaced the whole roof. The Landlords said once the roof and drywall repairs were made, they could then deal with the carpeting. The Landlords said that as a gesture of good will they told the Tenants they'd be willing to replace the carpets on the stairs and in one bedroom but that the rest of it would be cleaned and treated. The Landlords denied that there was mould or mildew in the carpets and in support said that neither the insurance adjuster nor the restoration company found any to be present.

The Landlords argued that the restoration process took longer than it should have because the Tenants were adamant that all of the water damaged carpet be replaced and refused to allow the restoration company to put the existing carpets back in place on January 22, 2009 when they were cleaned and treated. The Landlords claimed that they finally agreed to replace the carpeting to keep the Tenants happy. Consequently, the Landlords argued that the Tenants were not entitled to be compensated for the period when they refused to allow the existing, undamaged carpeting to be put back in place.

Analysis

In this case, I find that the Landlords acted reasonably quickly to take steps to repair the roof leak and thereafter to repair the water damage to the interior of the rental unit caused by it. The Tenants argue that the Landlords should compensate them for the period January 22 – February 26, 2009 because they lost the use of much of the rental unit because the Landlords refused to remove carpeting that had mildew or mould. The Landlords argue that there was no evidence of mould in the carpeting and that it was a result of the Tenants' refusal to use the existing carpeting that they lost the use of the rental unit for this period of time.

The Landlords relied on a written statement dated June 2, 2009 given by an employee of the restoration company that said in part, "at the point of completion of the service, we treated the carpet with BAC-STOP killer. There was no visible mould on the carpet, floor or gripper wood." The Landlord argued that this evidence should be given a lot of weight because the person giving the opinion was a certified carpet cleaner through the Institute of Inspection, Cleaning and Restoration.

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The Tenants argued that there was visible mould or mildew on the underside of the carpets prior to them being cleaned and that mould could still exist even though not visible. The Tenants also relied on copies of photographs of the carpeting and other areas of the rental unit. The Tenants also argued that the carpet cleaner's opinion relied on by the Landlords should not carry a lot of weight because he was not qualified to make that opinion.

I do not give a lot of weight to the opinion of the Landlords' carpet cleaner as I find that his opinion was based on a simple visual examination as stated in his written statement. I accept the proposition that mould spores could exist although not visible to the naked eye. However, in this matter, the Tenants have the evidentiary burden of proving that the carpets did contain mould or mildew. I do not give a lot of weight to the opinions provided by the Tenants that the carpets should be thrown out as the person(s) making that recommendation did not inspect the carpets in question. The Tenants photographs of the underside of some of the carpeting shows some faint, small black specks but I find that there is no evidence to conclude that these spots were from mould or mildew. In the absence of any other corroborating evidence to show that the carpeting posed a health or safety hazard or was otherwise unsuitable, I find that the Tenants have not met the burden of proof on them.

I find that the restoration of the rental unit was substantially completed on January 22, 2009 and that there is insufficient evidence to conclude that the Tenants lost the use of it for a further period of a month due to an act or neglect of the Landlords. Consequently the Tenants' application for further compensation is dismissed.

Conclusion

The Tenants' application is dismissed. 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: June 25, 2009.

Dispute Resolution Officer