

Dispute Resolution Services

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

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on April 27, the landlord did not participate in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The tenant testified that the rental unit is an older, run down home which he moved into on October 1, 2008. The tenant paid an \$800.00 security deposit. The tenant testified that he and the landlord agreed that he could improve the rental unit, which included repainting it and repairing the bathroom. The tenant testified that he became ill after living in the unit for a short time and went to see a number of doctors. The tenant arranged for mould experts to inspect the home. The tenant submitted a copy of the report generated by those experts. The report indicates that a number of different types of moulds were found throughout the home. The tenant testified that the experts verbally told him that he should not live in the home until the moulds had been removed and that his furniture should be cleaned with a hepa vacuum. The tenant testified that he immediately moved into a hotel and phoned his landlord to apprise her of the situation. The tenant further testified that although he tried to set up a time to meet with the landlord to discuss the report, she did not show up for the meeting and he discovered that she had left the country. The tenant stayed in the hotel for approximately 2 weeks, after which he rented a furnished room. The tenant vacated the rental unit on January 9 and moved his belongings into storage until such time as he

was able to secure a new home and clean his furniture. The tenant testified that he disposed of pillows and a duvet on the advice of the mould experts. The tenant further testified that he had to rent a studio on three occasions in January because the single room he was renting could not be used for voice recordings due to outside noise.

The tenant seeks to recover the rent paid in December, the costs for his hotel and rental room, the cost of the mould experts, costs of moving and storage, the cost of the studio rental, the cost of replacing pillows and the duvet and the cost of renting a vacuum and purchasing a hepa filter. The tenant also seeks to recover the cost of supplies used to improve the rental unit and clean the furniture as well as the cost of renting a post office box and arranging to have his mail forwarded. The tenant further seeks to recover the cost of preparing documents for this hearing and the cost of a land title survey.

The tenant testified that on January 25 he provided his landlord with his forwarding address in writing requesting the return of his security deposit. The tenant seeks the return of double his security deposit.

Analysis

I will first address the issue of the tenant's security deposit. I find that the tenancy ended on January 9 when the tenant removed the last of his belongings and that the tenant provided his forwarding address in writing on January 25. Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$800.00 and is obligated under section 38 to return this amount together with the \$3.02 in interest which has accrued to the date of this judgment. The amount that is doubled is the base amount of the deposit. The tenant is therefore awarded \$1,603.02.

The tenant claimed that his tenancy had to end because the home was uninhabitable

due to the mould growing therein. The tenant provided a fungal inspection report which indicates that various moulds were found in areas of the home. Some moulds were found to be in at an acceptable level while other moulds found around windows and doors and the shower were said to be beyond acceptable levels. The report indicates that for the removal of those moulds, “professional fungal remediation is recommended using full level 4 containment and negative air.” The report does not indicate that there would be any danger to the tenant if he continued to live in the rental unit, nor does it indicate what level 4 containment means or where that level of containment falls in a range of levels. The report indicates that personal safety equipment would be required for remediation, but does not indicate that personal safety equipment would be required for entry, which suggests to me that living in the house with the mould was not harmful, but disturbing the areas in which mould had been found could prove harmful. In short, I can find nothing in the report which suggests that the tenant had to immediately vacate the premises, which is the course of action he chose. I further find nothing in the report instructing the tenant to clean his furniture or dispose of his pillows and duvet.

All of the residents of British Columbia’s lower mainland are constantly exposed to moulds. Some moulds may be harmful when they reach significant levels; many are not. In order to prove his claim, the tenant must prove that the moulds to which he was exposed were so harmful that he could not stay in the rental unit. I find that he has not proven this. I accept that the tenant advised the landlord that he had a report which indicated that moulds needed to be removed and that repairs were required. When it became clear that the landlord did not intend to perform those repairs, the tenant had the option of applying for dispute resolution for an order that the landlord perform repairs. Instead, the tenant vacated the rental unit. I am not persuaded by the evidence that the house was uninhabitable due to the moulds which were found. I therefore dismiss the tenant’s claims for the return of his rent for December, his hotel costs, his rental room, the cost of the mould inspection, his moving and storage costs, his studio rental costs, the value of his pillows and duvet, the vacuum rental and filter purchase and the post office box and mail forwarding costs.

As for the costs of improving the unit, the tenant chose to move into a rental unit which by his own description was old and run down and entered into an agreement with the

landlord whereby he would perform improvements on the unit at his own expense. As I have explained above, I find that the tenant has not proven that he could not remain in the unit. I find that he made the choice to end his tenancy and that he must bear the expense of any improvements he performed during the time he lived in the rental unit pursuant to his agreement with the landlord.

Under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee. I find that the tenant's claims for the cost of preparing documents and performing a land title search are litigation-related expenses and are therefore dismissed.

As the tenant has only enjoyed partial success in his claim, I find that the tenant is entitled to recover one half, or \$50.00 of the filing fee paid to bring this application and I award the tenant \$50.00.

Conclusion

The tenant is awarded \$1,653.02. A formal order is enclosed herewith which may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated July 28, 2009.