

DECISION

Dispute Codes: MND, MNDC; FF

Introduction

This is the Landlords' application for a Monetary Order for compensation for damage or loss; and to recover the cost of the filing fee from the Tenants.

I reviewed the evidence provided prior to the Hearing. The parties gave affirmed testimony and the Hearing proceeded on its merits.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order against the Tenants for compensation for damages to the rental unit?
- Is the Landlord entitled to recover the cost of the filing fee from the Tenants?

Background and Evidence

There were no issues arising regarding service of the Notice of Hearing documents.

The rental unit is a townhouse in a condominium complex. The townhouse was new when the Tenants moved into the rental unit on October 29, 2006. The Tenants vacated the rental unit of February 15, 2009. The Tenants paid a security deposit in the amount of \$1,200.00, which has been applied in accordance with Section 38 of the Act, pursuant to an Order made at a previous Dispute Resolution Hearing.

No Condition Inspection Report was completed at the beginning or the end of the tenancy. Monthly Rent was \$2,400.00, due on the first day of each month.

The Landlord lives out-of-province, and has done so since the onset of the tenancy.

The Landlord gave the following testimony:

Approximately one year after the Tenants moved into the rental unit, they advised the Landlord that there were issues surrounding condensation. Initially, the Landlord

believed it was a construction issue and contacted the contractor to attempt to resolve it.

The Tenants did not take appropriate precautionary measures against mould, by not using the electric baseboard heaters and by misusing provided dehumidifiers and ventilation fans. The Tenants chose to use the fireplace as a primary heat source because gas was included in the strata fees and therefore was free to the Tenants. The Tenants did not properly ventilate the townhouse and as a result, condensation formed on the windows of the unheated rooms which promoted mould growth. The townhouse was not safe for habitation when the Tenants moved out. The Landlord spent many hours cleaning the townhouse and ridding it of mould.

In the fall or winter of 2008, the strata corporation sent the Tenants instructions regarding proper ventilation to avoid condensation on the windows, but the Tenants did not follow the instructions.

In January, 2009, an independent engineer and developer inspected the townhouse and discovered mould. They also inspected other townhouses in the same complex, but did not identify similar problems in other townhouses. The Tenants were provided with a dehumidifier, which they did not use.

The Tenants did not do a thorough job cleaning the townhouse before they moved out, and in particular, did not clean up the mould from the windows. The Tenants damaged the walls of the rental unit by hanging a flat screen television of a wall and installing a dog gate.

The Landlord is applying for compensation for one month's loss of rental income and for recovery of condo fees. The Landlord sold the rental property after making the repairs.

The Landlord gave the following breakdown of her monetary claim:

Claim	Cost to Landlord
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Compensation to the Landlord for her work in removing mildew from every window in the townhouse (18 hours at \$35.00 per hour)	\$630.00
Compensation to the Landlord for general cleaning (6 hours at \$35.00 per hour)	\$210.00
Compensation to the Landlord for time spent travelling to and from Alberta and the townhouse, and for picking up necessary supplies (6 hours at \$20.00 per hour)	\$120.00
Reimbursement of airfare (invoice provided)	\$419.30
Cost of hiring a painter to repair and paint walls (no invoice provided)	\$500.00
Reimbursement of cost of paint, paint supplies and cleaning supplies * four invoices provided, totalling \$155.94 only, as follows: Paint and dust mask: \$44.28 Cleaning supplies \$27.89 Paint, roller and scrapers \$58.15 Paint, handle and foam brush \$25.62	\$167.22
Compensation for one month's loss of rent	\$2,400.00
Condo fees	\$475.00
TOTAL	\$4,921.52

The Tenants gave the following testimony:

The Tenants advised the Landlord about the condensation problem within two weeks of moving into the townhouse. The Tenants continued to advise the Landlord about the condensation and resulting mould growth throughout the tenancy, together with a "laundry list" of other issues that required the Landlord's attention. The Landlord, despite numerous emails and reminders, did not remedy the mould problem and the Tenants were left to deal with the development company on their own.

In May, 2008, the Tenants provided the Landlord with a list of names of other condo owners in the same complex who were starting a class action law suit. In October, the

Landlord told the Tenants she had misplaced the list of names and asked them to provide them again.

Over the 2 ½ year period they were living in the townhouse, the Tenants spent a total of 164 hours attempting to deal with the development company. Initially, the development company took responsibility and were going to provide window vents. The development company later decided not to do so.

One of the Tenants has a severe allergy to mould and the Tenants became frustrated with the lack of action on the Landlord's part to remedy the situation. On January 7, 2009, the Tenants sent the Landlord an email requesting that she arrange for a professional to remove the mould in the townhouse, and asking for a rent reduction.

The Tenants made use of the dehumidifier and used the baseboard heaters in the townhouse. The Tenants set the thermostat to 15 degrees, a fact which can be supported by the photographs the Landlord provided in evidence. Average electrical bills in the summer months were \$40.00 per month. Average electrical bills in the winter months were \$200.00 per month.

The Tenants believe the "independent contractor" who inspected the townhouse was hired by the developer and therefore is not an impartial contractor.

The Tenants testified that they filled and sanded the walls where the TV and dog gate had left some damage, but they did not paint the walls. The Tenants testified that they did not remove the mould before they moved out due to health reasons and that there was some other cleaning to be done when they moved out.

When the Tenants moved out, the Landlord told the Tenants that she would be selling the townhouse.

Analysis

I have carefully considered the testimony and supporting documentation provided by the parties. The onus is on the Landlord/Applicant to prove her monetary claim. The Tenants provided copies of emails to the Landlord, together with her responses to those emails, over the period of the tenancy. The emails generally support the Tenant's

version of events with respect to the mould issue. In failing to provide and maintain the townhouse in a state of repair that complies with the health, safety and housing standards required by law, I find that the Landlord did not comply with Section 32 of the Act.

Furthermore, I believe it likely that the mould growth directly resulted from faulty construction and inadequate ventilation in the townhouse, and was not a result of the Tenants' misuse of the heating and ventilation system. A photograph submitted by the Landlord shows the thermostat in one of the bedrooms is set at 17 degrees. I accept the Tenants' submissions that they did use the electric heat and dehumidifier. The Tenants provided photocopies of hydro bills to support their claim that they used electric heat. The hydro bills were considerably higher in the winter than the summer months. I dismiss the Landlord's claim for damages against the Tenants arising out of mould growth.

I dismiss the Landlord's application for compensation for traveling expenses. While it is true that the Landlord lives in another province, the Tenants should not be made to bear the cost of her choice to do so.

The Landlord provided no invoice to support her claim for compensation in the amount of \$500.00 with respect to hiring a painter. I dismiss this portion of the Landlord's claim.

The Landlord did not re-rent the townhouse. Therefore, I dismiss the Landlord's application for loss of one month's rent and the condo fees.

There was no Condition Inspection Report done when the Tenants moved in or out of the townhouse to substantiate the Landlord's claim for additional cleaning and repairing of walls. However, the Tenants admitted that there was some general cleaning left undone when they vacated the townhouse and that they had sanded and filled the damaged walls, but had not painted. I find the hourly rate charged by the Landlord for cleaning the townhouse to be excessive, and award the Landlord compensation in the amount of \$20.00 per hour for 6 hours of work. I further award the Landlord the amount of \$155.94, for reimbursement of supplies for painting and cleaning.

The Landlord has been partially successful in her application and is entitled to recover the cost of the filing fee from the Tenants.

The Landlord has established a monetary claim, as follows:

Compensation for 6 hours of work at \$20.00 per hour	\$120.00
Reimbursement for painting and cleaning supplies	\$155.94
Recovery of filing fee	\$50.00
Total monetary award to the Landlord	\$325.94

Conclusion

I hereby grant the Landlord a Monetary Order in the amount of \$325.94 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.

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 12, 2009.
