

DECISION

Dispute Codes MNDC, OLC, ERP, RR, FF

Introduction

This hearing dealt with the Application for Dispute Resolution of the Tenants, who are seeking monetary orders for compensation under the Act or tenancy agreement, a rent reduction for loss of use of the rental unit, and orders to have the Landlords comply with the Act or tenancy agreement, make repairs to the rental unit, and to recover the filing fee for their Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Have the Landlords breached the Act?

Are the Tenants entitled to the relief sought?

Background and Evidence

On October 31, 2009, the Tenants noticed mold growing on shoes which were stored in a box in the closet of the rental unit. Over the next few days they discovered mold growing in several other locations in the master bedroom, including under their bed box spring and mattress, on the bed skirt, and in other items stored on the floor under the bed.

On November 4, 2009, the Tenants informed the one of the Landlords about the mold problem, and the Landlord went into the rental unit to inspect. The Landlord suggested several reasons to the Tenants why the mold might be growing, including moisture from the single pane windows in the rental unit. The Landlord installed insulating plastic over the windows.

The Landlords received a letter from the Tenants on November 7, 2009, requesting the mold issue be resolved, a rent reduction, or to be put up temporarily in a hotel.

The Tenants had to have their bed removed and replaced and spent time cleaning mold from around the master bedroom. They allege they were unable to use the master bedroom for 16 days.

The Tenants also allege they became ill from the mold. One Tenant is claiming 2 days missed work and the cost of an inhaler due to a bronchial infection she claims was caused by the mold.

The Tenants are claiming \$2,294.94 for missed work, the inhaler, loss of use of the master bedroom, replacing the bed and some bedding, and replacing shoes, clothes, a sports bag, a table and folding chairs, and for a vacuum cleaner they purchased with a 'hepa' filter.

The Tenants wrote again to the Landlords and requested compensation towards these items later in November of 2009. They also gave their Notice to End Tenancy to the Landlords, which was effective on December 31, 2009.

The Tenants attribute the mold to moisture in the rental unit coming up from the floor. They claim there was a previous flood in the rental unit, prior to the Landlords installing new floors and doing other work in the rental unit.

In evidence the Tenants have provided documents and photographs. The photographs indicate white, spore like mold on shoes, clothes and bedding. There was a large amount of this white mold hanging down from the wooden bed frame. There is also a photograph of what appears to be a darker type of mold around a window frame.

After the Tenants requested compensation from the Landlords, one of the Landlords had an insurance adjuster with an assistant come to the rental unit. According to the Landlord's testimony the insurance people were experts who specialize in mold. The Landlord claimed there was no written report given to him regarding the insurance inspection of the mold. The Landlords allege the insurance would not pay for any work to remediate the mold. The Landlords claim that they and the adjusters observed the following may be contributing factors to the mold in the rental unit:

- 1) Moisture coming up through the laminate floor;
- 2) Moisture in the master bedroom from two fish tanks in the living room;
- 3) Moisture coming from the window in the master bedroom or from other areas in the rental unit;
- 4) Heating kept too low by the Tenants;
- 5) The Tenants were not good house keepers;

- 6) Shoes were damp or wet without use in the boxes;
- 7) The Tenants' dog and cats, who go outside and bring back in moisture, slept at the foot of the bed causing the mold under the bed and in the bedding;
- 8) The property of the Tenants was not kept in a good humid environment as they may have been made from materials sensitive to mold being created;
- 9) Not enough air circulation in the bedroom; and
- 10) There was no water leakage from the drywall or floor in the master bedroom.

The Landlord testified that he did not think the Tenants had kept the unit clean enough, or with sufficient heat or air circulation, and this was also a cause for the mold.

The Landlord also spent significant time during the hearing blaming the Tenants' lifestyle for creating the mold, claiming the fact they work night shifts added to the mold. He also blamed the Tenants' pets for bringing moisture, or for urinating in the rental unit adding to the moisture problem.

On November 12, 2009, the Landlords purchased a de-humidifier for the Tenants' use in the rental unit. The Tenants testified that it was capturing 5 to 20 cups of water per day.

Analysis

Based on the foregoing, the testimony and evidence, and on a balance of probabilities, I find as follows:

I dismiss the claims and the Application for Dispute Resolution of the Tenants, as I find they did not have sufficient evidence to prove what has caused the mold in the rental unit.

The Tenants (Applicants) in this matter had the obligation of proving the claims that have been made against the Landlords (Respondents). The standard of proof required is the civil and administrative law standard, which is, claims must be proven on a balance of probabilities. If proof is established on a balance of probabilities, then the Applicant is entitled to the remedies available under the Residential Tenancy Act, and in some instances the common law.

The Tenants failed to prove the Landlords were responsible for causing the mold to occur, based on the balance of probabilities.

While I am unable to find that the Tenants were responsible for the mold, it *may* be just as likely that the mold occurred due to the Tenants not allowing proper air circulation under the bed, or by over filling the closets, or improperly storing their property.

Nonetheless, based on the evidence before me, it is impossible to determine what caused the mold to occur. As the Tenants did not have sufficient proof on the cause of the mold, I am unable to attribute liability to the Landlords and I must dismiss the Tenants' claims.

While some of the reasons the Landlords gave for what they believed caused the mold bordered on the ridiculous (such as blaming the dog and cats for urinating or bringing in too much moisture), I note the Landlords did respond quickly to the Tenants' concerns once they were informed of the mold.

Finally, as the Tenants were unsuccessful in their claims, I make no award to recover the filing fee.

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: January 15, 2010.

Dispute Resolution Officer