

DECISION

Dispute Codes: MNDC and FF

Introduction

This application was brought by the tenants on December 23, 2010 seeking Monetary Order for damage or loss under the legislation or rental agreement on the grounds that the rental unit had a problem with mould. The tenants also sought to recover the filing fee for this proceeding from the landlords.

Despite having been served with the Notice of Hearing which, according to the tenant, was served in person on December 23, 2010, the landlords did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issues to be Decided

The application now requires a decision on whether the tenants are entitled to a Monetary Order for damage or losses under the *Act*.

Background and Evidence

The tenancy began on October 31, 2009 and ended on December 31, 2009. Rent was \$1,150 per month and the landlords hold a security deposit of \$575 paid on October 31, 2009.

During the hearing, the tenant gave evidence that there was no written rental agreement but that the landlords had agreed that rent could be paid in instalments for a period early in the tenancy.

When the tenants raised concerns about mould in the rental unit, the landlords suggested they might wish to move. Anticipating the need for funds for the imminent move and amidst growing conflict with the landlords, the tenants did not pay the rent for the latter half of December and the landlords issued a 10-day Notice to End Tenancy.

While the tenant raised the question of the security deposit, it was not claimed on the application and could not be addressed in the present hearing as the landlords' had not been notified that it might be in dispute. In addition, the tenants have not provided the landlords with a forwarding address and the landlords have not returned or made application to make claim on the deposit.

The tenant made reference to her written submission dated December 18, 2009, which was also provided to the landlord, describing substantial moisture on the windows and mould related odours, compounded by the fact that the kitchen fan did not exhaust to the outside. She stated that she believed recent painting in the rental unit covered a more serious mould problem. The tenant said she had lost a family member due to a lung illness thought to be related to mould and was, therefore, very apprehensive about its presence.

Analysis

While I commend the tenant for her candour during the hearing, I find that, except for her written narrative, I had no further evidence before me to corroborate the presence of mould in the rental building.

As to the moisture build-up on the windows, such problems are not uncommon in a cold climate with single-glazed windows as the tenant believed existed at the rental unit.

In order to qualify for a monetary compensation, the tenants would need to have first provided substantial proof that a mould problem existed, and second, that they had advised the landlords of it in writing, following which they had given the landlords a reasonable time to remedy the problem. As a matter of note, while there are remedies available if a landlord is thought to have failed to maintain the rental unit or breached a material term of the rental agreement, withholding rent is not among them.

Conclusion

In the absence of more substantial evidence of the mould and of the tenants' written notification to the landlords, I must dismiss the application without leave to reapply.

May 26, 2010