DECISION

Dispute Codes:

MND, MNDC, MNR, MNSD, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for a monetary Order for damage to the rental unit; for a monetary Order for money owed or compensation for damage or loss; for a monetary Order for unpaid rent; to keep all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for the return of all or part of the security deposit; and to recover the fee for filing this Application for Dispute Resolution.

The Landlord and the female Tenant were at the hearing but the male Tenant was not in attendance. The Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were sent to the male Tenant via registered mail although she could not state when the mail was sent and she did not submit evidence to corroborate her statement that the mail was sent. She was not even able to cite a Canada Post tracking number to corroborate this statement.

The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent these documents, as set out under Section 3.1 of the Residential Tenancy Branch Rules of Procedures. The Landlord has submitted insufficient evidence to cause me to conclude that the male Tenant was served with copies of the Application for Dispute Resolution Package and Notice of Hearing. The Landlord was given the opportunity to amend the Application for Dispute Resolution to remove the male Tenant as a Respondent or to withdraw the Application. The Landlord asked to amend the Application for Dispute Resolution to include only the female tenant who was in attendance at the hearing and who acknowledge being served of notice of this hearing by registered mail . The Application for Dispute Resolution has been amended in accordance with the request of the Landlord.

The Landlord acknowledged being served with notice of this hearing and a copy of the Tenant's Application for Dispute Resolution by registered mail.

The Landlord and the female Tenant were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided in relation to the Landlord's Application for Dispute Resolution are whether the Landlord is entitled to compensation for unpaid rent and for damage to the rental unit; to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

The issues to be decided in relation to the Tenant's Application for Dispute Resolution are whether the Tenant is entitled to compensation for loss of quiet enjoyment of the rental unit and for damage to personal property; to the return of their security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this was a six-month fixed term tenancy that began on December 15, 2009; that the Tenant was required to pay monthly rent of $1,200.00 on the fifteenth day of each month; and that the Tenant paid a pet damage deposit of $600.00 and a security deposit of $600.00 in December of 2009.

The Landlord and the Tenant agree that on February 08, 2010 the Tenant sent the Landlord an email in which the Tenant advised the Landlord that they intend to vacate the rental unit on March 15, 2010. The parties agree that the tenancy ended on March 06, 2010 and that the Tenant provided the Landlord with their forwarding address, via email, on February 23, 2010.

The Landlord and the Tenant agree that the Tenant paid rent for the period between January 15, 2010 and February 15, 2010 but that the Tenant did not pay rent for the period between February 15, 2010 and March 15, 2010. The parties agree that on February 09, 2010 the Tenant sent the Landlord an email and offered to allow her to keep their security deposit and pet damage deposit in lieu of rent for the period between February 15, 2010 and March 15, 2010. The Landlord responded by advising the Tenant this was not the proper method of dealing with the deposits and requested that they pay the rent for that period, which the Tenant did not pay.

The Landlord is seeking compensation for unpaid rent for the period between February 15, 2010 and March 15, 2010. The Tenant stated that the rent for that period was not paid due to the deficiencies with the rental unit.

The Landlord is seeking compensation, in the amount of $2,700.00, for unspecified damages relating to moisture in the rental unit. There is nothing in the Application for

Dispute Resolution or the associated documents which specifies the nature or cost of repairs that relate to the moisture damage.

The Landlord was advised that her application for compensation for damages to the rental unit was being refused, pursuant to section 59(5)(a) of the *Residential Tenancy Act (Act),* because her Application for Dispute Resolution did not provide sufficient particulars of her claim for compensation for damages, as is required by section 59(2)(b) of the *Act*. In reaching this conclusion, I was strongly influenced by the absence of a list of alleged damages that show how much compensation the Landlord is claiming for each damaged item. I find that proceeding with the Landlord's claim for damages at this hearing would be prejudicial to the Tenant, as the absence of particulars makes it difficult, if not impossible, for the Tenant to adequately prepare a response to the claims. The Landlord retains the right to file another Application for Dispute Resolution in which she claims compensation for damages to the rental unit.

The Tenant is seeking compensation, in the amount of $2,400.00, for loss of the quiet enjoyment of the rental unit due to the presence of mould in the rental unit. The Tenant submitted several photographs, which the Landlord acknowledged receiving, that demonstrate there was mould in various places in the rental unit. The Tenant submitted no evidence to establish that the mould represented a health hazard. The Tenant submitted no medical evidence to establish that the mould impacted the health of any of the occupants in the rental unit, although the Tenant believes that some of her family members experienced an allergic reaction to the mould.

The Landlord and the Tenant agreed that the Tenant advised the Landlord of the presence of mould on January 13, 2010 and that the rental unit was inspected on February 04, 2010, at which time several problems were identified, including potential problems with the windows, gutters, and attic venting.

The Landlord submitted an email from a tradesperson, dated February 25, 2010, in which he reported that he had connected three bathroom fans to vents in the roof; that he had repaired the venting to the HRV system which was full of water upon inspection; and that the HRV system needed new filters. He speculated that the HRV system had and that a fan in the hallway not been used by the Tenant until the moisture problem was identified.

In an email from the Tenant to the Landlord, dated February 03, 2010, the Tenant stated that they had the "heap thingy" on but it never shuts off, which corroborates the tradespersons speculation that the Tenants had shut off the HRV system. The Tenant contends that the HRV system was not functioning properly because it was full of water, so it does not matter whether they had it on or off.

The Tenant stated that they were extremely concerned about the health of their children and they arranged for them to live elsewhere during the latter portion of this tenancy; that they had to move out quickly as a result of the mould; and that her husband was laid off from work because of time missed for dealing with this issue.

The Tenant is claiming compensation, in the amount of $500.00, for a mattress that was allegedly damaged by mould during this tenancy. She submitted a photograph of a bed

that appears to have been damaged by mould. She did not submit any evidence to corroborate her statement that it will cost $500.00 to replace the mattress.

The Tenant is claiming compensation, in the amount of $500.00, for an area carpet that was allegedly damaged by mould during this tenancy. She submitted photographs of a carpet that appears to have been damaged by mould. She did not submit any evidence to corroborate her statement that it will cost $500.00 to replace or repair the carpet.

The Tenant is claiming compensation, in the amount of $150.00, for replacing two pairs of leather shoes that were allegedly damaged by mould during this tenancy. She submitted photographs of the shoes that appear to have some mould on them. She did not submit any evidence to corroborate her statement that it will cost $150.00 to replace the shoes.

The Tenant is claiming compensation, in the amount of $324.77 for hydro costs during a portion of this tenancy. The Tenant stated that she was billed this amount for hydro costs for the period between December 16, 2009 and February 16, 2010. The Tenant believes that her hydro bill was excessive because of the moisture problem in the rental unit, although she provided no evidence to support this belief, and because the windows were not sealed properly. She could not explain why the Landlord should be responsible for the entire hydro bill during this period.

The Tenant is claiming compensation, in the amount of $500.00, for moving expenses incurred because they moved out of the rental unit. She submitted no evidence to corroborate her statement that she incurred these costs.

Analysis

The undisputed evidence is that this tenancy began on December 15, 2009; that the Tenant was required to pay monthly rent of $1,200.00 on the fifteenth day of each month; that the Tenant paid a pet damage deposit of $600.00 and a security deposit of $600.00 in December of 2009; that the Tenant gave notice to end the tenancy on March 15, 2010; that the Tenant vacated the rental unit on March 06, 2010; and that the Tenant did not pay rent for the period between February 15, 2010 and March 15, 2010.

The Landlord and the Tenant agree that on February 08, 2010 the Tenant sent the Landlord an email in which the Tenant advised the Landlord that they intend to vacate the rental unit on March 15, 2010. The parties agree that the tenancy ended on March 06, 2010 and that the Tenant provided the Landlord with their forwarding address, via email, on February 23, 2010.

Section 26(1) of the Act stipulates that tenants must pay rent when it is due whether or not the landlord complies with the Act or the tenancy agreement. I find that the Tenant was required to pay rent of $1,200.00 on February 15, 2010 regardless of the fact the Tenant had concerns about the condition of the rental unit.

I find that the Tenant gave the Landlord written authorization to apply the security deposit and pet damage deposit to the rent they owed for the period between February 15, 2010 and March 15, 2010 in an email the Tenant sent to the Landlord on February 09, 2010. Although a tenant does not have a right to apply such deposits to rent owing without the written consent of the Landlord, pursuant to section 21 of the *Act*, I find that the email does serve to give the Landlord written authorization to retain the security deposit in lieu of the rent. I find, therefore, that the Landlord had the right to retain the security deposit in lieu of the unpaid rent, pursuant to section 38(4) of the *Act*.

As the Landlord did not return the security deposit, I find that the Landlord retained the security deposit in lieu of the rent that was owed for the period between February 15, 2010 and March 15, 2010. As the Landlord has already been compensated for rent for this period, I hereby dismiss the Landlord's claim for compensation for unpaid rent.

Based on the evidence provided by the tradesperson hired by the Landlord, I find that there was a moisture problem in the rental unit that was, in large part, due to venting problems in the attic. I cannot conclude that the moisture problem was exacerbated by the possibility that the HPV system was turned off by the Tenant, as the tradesperson determined that the venting to the HPV system was full of water, which causes me to conclude that the system would not have been functioning properly even if it had been activated. I cannot conclude that the moisture problem was exacerbated by the possibility that the a hallway fan was turned off by the Tenant, as the tradesperson determined that the fans were venting into the attic, which causes me to conclude that the fans would not have remedied the moisture problem even if they had all been activated.

I find that the Tenant submitted no medical or scientific evidence to corroborate their suspicion that the presence of this type of mould was unhealthy or that it impacted the health of any occupant in the rental unit. I do find, however, that living in a rental unit with mould is unpleasant and necessitates a significant amount of cleaning. As the presence of mould in this rental unit is reasonably significant, as depicted by the photographs, I find that the presence of mould did reduce the value of this tenancy.

Although the Tenant supplied no evidence to support her fear that the mould constituted a health risk, I accept that her concerns about this matter caused her to move her children out of the rental unit during the latter part of the tenancy and that it caused them to end this tenancy. I find no evidence to support her position that the presence of mould resulted in her husband being laid off from work. Establishing the amount of compensation that should be awarded for such situations is always difficult, given that such an award is entirely subjective.

In these circumstances, I find that the presence of mould reduced the value of this tenancy by approximately $200.00 per month. I find that the Tenant is entitled to this reduction for the period between January 13, 2010, when the problem was first identified, until March 15, 2010, which is when the tenancy was to end. On this basis, I

find that the Tenant is entitled to compensation in the amount of $400.00 for the loss of quiet enjoyment of the rental unit.

I find, on the balance of probability, that the presence of mould in the rental unit damaged the Tenant's mattress and carpet. I based this conclusion on the photographs of the mattress and carpet, which appear to have mould growing on them. I find, on the balance of probabilities, that the mould was present due to deficiencies with the rental unit. In addition to establishing that the Tenant's property was damaged as a result of a deficiency with the rental unit, the Tenant must also accurately establish the cost of repairing the damage caused by the rental unit, whenever compensation for damages is being claimed.

In these circumstances, I find that the Tenant failed to establish the true cost of replacing the damaged mattress or carpet. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the Tenant's claim that it will cost $500.00 to replace the mattress or that it will cost $500.00 to repair or replace the carpet. On this basis, I award nominal damages in the amount of $1.00 for replacing the mattress and $1.00 for replacing the carpet.

I find that the Tenant submitted insufficient evidence to establish that the mould damaged two pairs of shoes. Although the photographs submitted in evidence indicate there is some mould on the shoes, I find that the amount of mould on the shoes is minimal and that the shoes could likely be cleaned with a minimum effort. On this basis, I dismiss the Tenant's claim for compensation for replacing the shoes.

I find that the Tenant submitted insufficient evidence to establish that her hydro bill of $324.77 was excessive for the period between December 16, 2009 and February 16, 2010. . In reaching this conclusion I was influenced, in part, by the fact that the Tenant submitted no evidence to corroborate her testimony that a hydro bill for $324.77 is an excessive amount for two winger months. I was further influenced by the fact that she submitted no evidence to corroborate her statement that the windows in the rental unit were inadequate or that excessive moisture would result in increased hydro consumption. On this basis, I dismiss the Tenant's application for compensation for hydro costs.

I find that the Landlord took reasonable steps to resolve the moisture problem in the rental unit when she had a tradesperson remedy the venting problems in the attic. I find that the Tenant did not need to vacate the rental unit, given that the Landlord took reasonable steps to remedy the situation. Given that the Tenant elected to vacate the rental unit in spite of the repairs that had been made, I find that the Tenant is responsible for the costs of moving out of the unit. On this basis, I dismiss the Tenant's claim for compensation for moving costs.

Conclusion

I find that the Landlord has failed to establish the merits of her Application for Dispute Resolution. I note that the Landlord did not need to file an Application for Dispute Resolution because she already had written permission from the Tenant to apply the security deposit and pet damage deposit towards unpaid rent. On this basis I dismiss the Landlord's claim to recover the fee paid for filing her Application for Dispute Resolution.

I find that the Tenant has established a monetary claim of $452.00, which is comprised of $400.00 in compensation for loss of quiet enjoyment as a result of the mould in the rental unit; $2.00 in nominal damages; and $50.00 in compensation for the cost of filing the Tenant's Application for Dispute Resolution. Based on these determinations I grant the Tenant a monetary Order for the amount $452.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court 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: July 20, 2010.

Dispute Resolution Officer