



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with an application by the tenants for a monetary order. Both parties participated in the conference call hearing.

Although the tenants had originally made a claim for an order setting aside a notice to end this tenancy, an order that the landlord comply with the Act, an order that the landlord perform repairs and an order permitting them to reduce their rent, I consider these claims to have been withdrawn as the tenancy has now ended.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenants were obligated to pay \$2,000.00 per month in rent. The tenancy lasted for approximately 6 months and the tenants vacated the rental unit sometime between September 1 – 8, 2010.

The tenants testified that they sublet the basement of the rental unit to 2 subtenants who each paid \$500.00 per month. The tenants and a subtenant who appeared as a witness testified that in early April the taps to the basement shower stopped operating. The tenants testified that they immediately asked the landlord to repair the taps, but he did not perform repairs until May. The subtenant testified that he vacated the rental unit at the end of April because he was unable to use the downstairs shower and there were

significant mould issues in the bathroom and the room beside the bathroom. The tenants submitted photographs showing the condition of the walls, shower and cement floor of the basement and testified that they vacated the unit because they were concerned about the effects of mould on their health.

The landlord claimed that he was not advised that there were problems with mould until he received the tenants' application for dispute resolution. The landlord claimed that he repaired a stopped drain on an upper floor which had caused water to leak down the walls and had to wait for the walls to dry before he could effect repairs. The landlord submitted a copy of the tenancy agreement and testified that he could not give a copy of his evidence to the tenants because they vacated the rental unit in early September and he did not have their forwarding address. I have not considered the tenancy agreement in my deliberations as the tenants were not given a copy and the landlord had ample opportunity in the month of August to serve them with his evidence.

Analysis

The tenants seek to recover 3 months of rent they would have received from their subtenants in the months of May – August inclusive, totalling \$3,000.00. The tenants further seek compensation for moving expenses as they claim they had to vacate the unit because of mould issues.

Section 34(1) of the Act provides that tenants must not sublet a rental unit unless they have the landlord's written consent. The tenants freely admitted that the people residing in the basement of the rental unit were subtenants. The tenants provided no proof that they had the landlord's written consent to sublet the unit and I therefore find that subletting the basement contravened section 34(1) of the Act. The landlord cannot be held liable for loss resulting from unauthorized activity. Accordingly the tenants' claim is dismissed.

As for the claim for moving expenses, I am satisfied that mould existed in the rental unit. However, the unit is located in the lower mainland of British Columbia, a humid environment in which mould is found in every household. In order to establish their

claim, the tenants would have to prove that the mould found in the rental unit was toxic, that it could not be controlled through reasonable cleaning or that the landlord had neglected requests to perform repairs. The tenants testified that they advised the landlord of the mould problem when they filed their application for an order that he perform repairs. Within a few weeks of the time they filed their application, the tenants advised the landlord that August would be the last month of their tenancy. I find that the tenants have not proven that the mould was toxic and I further find that they have not proven that the mould could not be controlled through reasonable cleaning practices. I am unable to find that the landlord neglected addressing the mould problem. It seems reasonable that upon being advised that the tenants were vacating the rental unit, the landlord would wait to perform repairs until the rental unit was empty. I recognize that the tenants claim the landlord is attempting to re-rent the unit without having performed repairs, but this is irrelevant to their claim. I find that the tenants have not proven they were forced to vacate the unit and accordingly their claim for moving expenses is dismissed.

I note that the landlord made a number of allegations regarding the tenants having breached the tenancy agreement and caused damage, but I have not addressed these issues as the landlord has not made a claim and the issues are irrelevant to the tenants' claim.

Conclusion

The claim is dismissed.

Dated: September 14, 2010

Dispute Resolution Officer