

DECISION

Dispute Codes: MNDC, O and FF

Introduction

This application was brought by the tenant seeking a Monetary Order for damage or loss under the rental agreement arising from concerns over the septic system on the rental property and mold in the rental unit. The tenant also seeks reimbursement for a peripheral tank for the swimming pool she had replaced and for other improvements.

Issues to be Decided

This application requires a decision on whether the tenant has proven that the landlord is responsible for illnesses contracted by her and her son, and whether the tenant is entitled to be reimbursed for the equipment replacement in the swimming pool and other improvements.

Background and Evidence

This tenancy began on April 4, 2006 and ended on January 31, 2009. At the end of the tenancy rent was \$2,000 per month and the landlord held a security deposit of \$950 paid on or about April 15, 2010.

The tenant lived in the rental unit with her son and her mother. The City of Surrey owns the rental property and was represented by its property management firm. This tenancy

was the subject of a hearing on February 25, 2009 in which the landlord was granted a Monetary Order for unpaid rent/loss of rent as a result of late notice.

During the hearing, the tenant stated that she had to replace a tank which services the swimming pool at a cost of \$711.85 for which she sought reimbursement. The tenant stated that she had also installed some carpeting and kitchen counters in the rental unit as she had hoped for and anticipated a long tenancy, although there appeared to be an understanding that the landlord might demolish the rental building in eight years. The landlord stated that the rental agreement clearly states that the landlord will not maintain the swimming pool and that is a standard provision in all agreements the landlord makes where there is a pool.

The tenant gave evidence that she had been diagnosed with a parasite in April of 2007, substantiated by copies of medical lab reports, and that her son had been diagnosed with the same parasite in October of 2008. She initially suspected the drinking water in the rental unit and later attributed it to a malfunction in the septic system. The tenant alleges that the landlord was negligent in maintaining the system.

The tenant further submitted that mold in the rental unit also could have been a contributing factor. A note dated February 23, 2010 from a physician who treated the tenant's mother, noted that he had been treating her for eight to ten months for an eye and nasal condition, "possibly due to mould exposure. Conditions are improving after moving away from mould exposure."

The tenant stated that the landlord had been advised of the tenant's concerns about a leaking roof and poor operation of household drains early in the tenancy.

The leaking roof was subsequently repaired, but the tenant believes that the septic system was not satisfactorily addressed.

She stated that a service person sent to pump the tank in November of 2008 told her that it had not been pumped for years. He further indicated potential problems with the septic field which the tenant believes was located in the same area as her son's trampoline.

Earlier, at the tenant's urging, the local health authority tested the water in the rental unit and found no cause for concern. Apparently, at the same time, the tenant was advised that the mold could be sufficiently addressed by washing the affected areas with chlorine.

The tenant claims the reimbursement for loss of quiet enjoyment of the rental unit and in compensation for loss of income for time off work due to illness.

The landlord contested the tenant's assertion that the septic tank had not been maintained and submitted paid invoice dated May 29, 2004 showing charges of \$337.05 for digging and refilling to access the tank and for pumping out it out. That invoice did contain a notation that drain field was "not good."

The landlord submitted a second paid invoice for the same company dated January 31, 2007 for \$421.88 from the same company for cleaning and inspecting and disposing of the contents of the tank and noted that the tank had been hard to find.

Another invoice from another company for \$483.00 shows that the tank was again inspected and pumped on November 26, 2008 and wisely made a note of the location, type and depth of the tank.

The landlord also submitted a copy of a laboratory report dated November 26, 2008 reporting on analysis of water taken from the kitchen tap of the rental unit. The water

was analysed against approximately 30 categories and was found to pass or be acceptable in all of them.

The landlord submitted a report from a professional engineer commissioned by the City of Surrey and dated December 8, 2010 reporting on an investigation and inspection of the water supply and mold conditions in the home. As noted, the water supply was found to be safe. The report observed that, given the eight month interval between the mother and son's symptoms, it was more likely they would have emerged closer together if drinking water was the source.

The report noted one area of mold in the bedroom that appeared to be fresh and another on the attic cover that appeared older. It suggested that the former might indicate a present leak and should be checked but expressed no alarm. The engineer's report stated he was unable to locate a black line of mold on carpets reported by the tenants.

The landlord also submitted a copy of a letter from Fraser Health Inspector acknowledging receipt of the findings on the water investigation and noting that the complainant tenants would be advised that his involvement was complete.

Analysis

As to the tenant's claim for recovery of her expense for the pool tank, I accept the evidence of the landlord that the rental agreement is abundantly clear that the landlord does not maintain the pool

As with the other improvements the tenant made to the home, I find that she did so of her own volition and without prior agreement of the landlord to pay or share the cost. Therefore, I find that the tenant may not reclaim her costs from the landlord.

With respect to the illnesses suffered by the tenants and the loss of wages and consequent costs suffered by the applicant tenant, I cannot find that these resulted from negligence on the part of the landlord.

The landlord has proven that the septic tank was pumped more frequently than is the norm and the thorough testing of the water effectively eliminated the possibility that it contributed to the illness of the parties. While the mother's physician's written submission states that her symptoms could be related to the mold, he did not have the advantage of inspecting the home as did the engineer engaged by the city.

Conclusion

Having found no negligence in the conduct of the landlord in responding to the tenant's concerns, and having found no direct proof of that the septic system or the water supply were causative of the symptoms experienced by the tenants, I find that the application should be dismissed without leave to reapply.

October 6, 2010