



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for compensation for damage to the rental unit, to retain the deposit in satisfaction of the claim and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$352.80 for cleaning costs?

May the landlord retain a portion of the deposit paid in satisfaction of the claim?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on June 1, 2009, as a fixed term ending June 30, 2010. Rent was due on the first day of the month and a deposit in the sum of \$697.50 was paid on May 11, 2009. The tenancy ended on the last day of the fixed term.

This basement unit was in a condo building that had been remediated in 2007; work was completed in May 2008.

On May 13, 2010, the tenant noticed mould in the rental unit, on a number of exterior walls and immediately reported it to the landlord. On May 21, 2010, the engineering firm that completed the remediation carried out an inspection of the unit and issued a June 1, 2010, report in which they found that the humidistat was turned off and interior humidity in the range of 56%. The report indicated that 6 people lived in the unit and did a significant amount of cooking in the home.

The report stated that the mould growth was consistent with interior condensation, where exterior walls are colder than interior walls, which can result in condensation should humidity levels become elevated. Furniture and other objects against the walls prevent warm air from reaching the exterior walls, which also contributes to condensation and the growth of mould. The report recommended cleaning with bleach, paint to conceal the stains and that residents should be instructed to use exhaust fans and the humidistat.

The unit was rented out from May 2008, to May 2009, and no mould problems emerged. The landlord submitted that the tenants failed to open windows and allowed moisture and humidity levels to increase to the point where mould developed. The landlord has claimed the cost of bleaching walls, primer and paint applications in the sum of \$352.80. The landlord submitted a copy of a June 2, 2010, paint and cleaning invoice, photographs taken of the walls on June 30, 2010 and the June 1, 2010, report that included 6 photographs showing mould. The condition inspection report also indicated that there was evidence of mould on the walls in 5 areas.

The tenants denied that the landlord gave them any special instructions in relation to use of the humidistat and stated that they used the bathroom fans and humidistat when the moisture levels in the unit seemed high. The tenants had previously lived in a rental unit for a period of 8 years with the same number of people and cooked in the same manner, which did not result in the growth of mould. The tenants stated that after the inspection was completed they did wipe down the mould areas.

The landlord received the tenant's forwarding address just prior to the end of the tenancy and within 8 days of the end of the tenancy submitted an application claiming against the deposit paid.

Analysis

Section 32 of the Act, provides, in part:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

I find, on the balance of probabilities and the evidence before me, that there is no evidence that the tenants failed to maintain reasonable standards in the rental unit or caused mould to grow as a result of negligence. I would expect that at this point the landlord would undertake any remediation to remove the mould, investigate the cause and, if necessary, to provide the tenants with instructions as to how to avoid a recurrence.

The June 1, 2010, engineers report provided no evidence that the tenants were neglectful and I find the placement of furniture against walls, the failure to open windows, the presence of 6 occupants and cooking were normal, day-to-day activities or expectations that form the part of any tenancy.

There was no evidence before me that the tenants were provided with instructions at the start of the tenancy as to the use of the humidistat and no evidence that the tenants failed to use the humidistat. The humidistat was found turned off on one occasion only; which failed to support a claim that the growth of mould was due to the tenant's negligence. In fact once they discovered the mould the tenants immediately reported it to the landlord, which I find demonstrated their concern at having found the mould.

Therefore, in the absence of any evidence that the tenants did not maintain the unit in a manner contemplated by the Act and in the absence of any evidence that the mould was due to the negligence of the tenants, I find that the monetary claim is dismissed.

Residential Tenancy Branch Policy suggests that when a landlord claims against the deposit paid, any residue of the deposit should be Ordered returned to the tenants. I find this to be a reasonable stance. As the landlord's claim is dismissed I Order the landlord to return forthwith the deposit in the sum of \$697.50 to the tenants at the forwarding address provided by the tenants. No interest has accrued on the deposit. I have also issued the tenants a monetary Order in the sum of \$697.50, which is enforceable in Small Claims Court should the landlord not return the deposit.

Conclusion

The landlord's claim is dismissed.

Based on these determinations I grant the tenants a monetary Order for return of the deposit paid in the sum of \$697.50. 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: November 23, 2010.

Dispute Resolution Officer