



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit and a cross-application for a monetary order and an order for the return of the security deposit. Both parties participated in the conference call hearing.

At the hearing the landlord advised that he was withdrawing his claim for loss of income for October and for the cost of moving and storing the tenants' goods. The tenants advised that they were withdrawing their claim for the value of their goods and limiting their claim solely to their out-of-pocket expenses.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The following facts are not in dispute. In July and August 2010 the tenants received notice from the strata that access to their suite would be required. In July the notice specified that plumbers would require access but the August notice did not give a purpose for entry. The tenants left on vacation on August 4 and returned in the evening of August 11 to find that walls and the ceiling in the bathroom had been removed, holes had been made in walls throughout the unit, their belongings had been moved and were covered with dust.

The tenants contacted the landlord who indicated he was unaware of the work done by the strata and who directed them to stay at a motel for the night. The following day the landlord met with the tenants and with the contractors retained by the strata. The contractors indicated that work would be complete by August 21. The landlord returned

the rent paid by the tenants for the month of August. The tenants returned on August 21 to find that the work was not complete. The tenants hired O.S.R., a restoration company, to inspect the unit, test for asbestos and provide a quotation to move and clean their belongings. O.S.R. took a sample from the drywall joint compound, tested it and provided a written report which stated that trace amounts of asbestos were found in one area of the bedroom ceiling, 1 – 5% asbestos was found in the compound in another area of the ceiling and in the wall there was no asbestos in one layer but 1 – 5% asbestos in another layer.

On August 25 the parties agreed that the tenancy would end on that date and signed a mutual agreement to end tenancy. The tenants did not move their furniture and testified that they were concerned that exposure to the dust on the furniture would aggravate the tenant F.L.'s medical condition. F.L. testified that he suffers from chronic obstructive pulmonary disease and entered into evidence a doctor's note confirming that it would be unsafe for him to live in a dusty environment. F.L. also entered into evidence a doctor's note stating that having been told that the tenant's apartment and furniture were covered with asbestos dust, the doctor recommended that the tenant acquire a new apartment and furniture.

On September 9, O.S.R. issued a letter advising the tenants that there was a high likelihood that the dust contained asbestos and that the tenants should arrange for a proper assessment to be carried out.

On September 22 a letter was issued by L.E.A., a firm which provided materials testing, which confirmed that samples from the rental unit which had been submitted for testing were found to be non-asbestos containing.

The tenants moved their belongings from the rental unit shortly after the L.E.A. letter was issued.

The tenants incurred various out-of-pocket expenses which they seek to recover. The landlord testified that he was unable to re-rent the unit because the tenants did not remove their furniture and the parties contracted to repair the walls had to work around the furniture. F.L. testified that when he removed his furniture, the painting and drywalling was still incomplete.

Analysis

I accept that the landlord had no knowledge of the work performed by the strata and therefore did not breach his obligation under the Act with respect to notice of entry. I further accept that the actions of the strata were to a large degree, beyond the control of

the landlord. I find that the landlord was in no way negligent with respect to how he addressed issues which arose once the situation was brought to his attention.

The tenants were justified in their concern that asbestos may be present in the building but as it was eventually found that there was no asbestos, I find it unreasonable to lay the financial implications of that concern on the landlord. The parties encountered a situation for which neither were at fault and each incurred some loss as a result. It is unreasonable to make either party responsible for the loss of the other.

I find insufficient evidence to show that the rental unit would have been repaired in time to secure a new tenant for September 1 and therefore I dismiss the landlord's claim for loss of income for that month. I find that the tenants were adequately compensated for their loss of quiet enjoyment in August by the full refund of the rent paid for that month and I find that the landlord cannot be held responsible for the financial loss incurred as a result of the tenants acting out of an abundance of caution. The tenants' claim for compensation is dismissed.

I find that the landlord has established no claim on the security deposit and I therefore order the landlord to forthwith return to the tenants the \$287.50 security deposit together with the \$3.50 in interest which has accrued to the date of this judgment.

Conclusion

The landlord's claim is dismissed in its entirety and the tenants claim for compensation is dismissed. I grant the tenants a monetary order under section 67 for \$291.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: January 17, 2011

Dispute Resolution Officer