



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

This was the hearing of applications by the tenants and by the landlord. The hearing was conducted by conference call. The named parties attended the hearing. The tenants applied for a monetary order in the amount of \$2,941.77. The landlord applied for a monetary order in the amount of \$8,374.00.

Issue(s) to be Decided

Are the tenant's entitled to a monetary order for moving and other expenses?
Is the landlord entitled to a monetary order for loss of rent and damage to the rental unit?

Background and Evidence

The rental property is a ground floor suite in the landlord's house in Vancouver. The tenancy began on September 1, 2009 for a fixed term ending August 31, 2010. Monthly rent was \$1,300.00. The tenants paid a security deposit of \$650.00 on August 24, 2009.

The tenants moved out of the rental unit on May 27, 2010. They gave the landlord a notice dated June 1, 2010 stating their intention to move out on May 26, 2010. The tenants requested the return of their damage deposit and additional amounts as compensation, including storage and moving costs, the cost to obtain a fungal report, time off work, moving supplies and rent for five days in a new location..

According to the tenant there was mould in the rental unit. The tenants discovered the mould problem when they found that some of their goods that they stored in an unused space attached to the rental unit were damaged due to mould. The tenants commissioned a mould inspection. According to the tenants the inspection showed that there was toxic mould in the rental unit and, based on the information they received the tenants moved out of the rental unit. The tenants claim to be entitled to the return of double their security deposit, refund of rent, moving expenses and loss of income and

the cost to obtain the mould inspection report. The tenants claimed the total amount of \$2,941.77.

The landlord testified that there is no basis for the tenants' claims that the house was rendered uninhabitable due to mould. The landlord claimed that the tenants moved out without giving proper notice. He testified that the tenants caused a flood in the rental unit by placing a door mat on top of the drain at the entrance to the rental unit. When the fibre door mat disintegrated it blocked the drain and caused the rental unit to flood which damaged the laminate floors in the rental unit. The landlord claimed payment of the sum of \$8,374.00 for loss of revenue for one month and the cost to repair damage to the rental unit.

The tenants produced a copy of a document titled: "Fungal Inspection Report". According to the report the inspector performed an inspection on May 25, 2010. According to the report the inspector performed a visual inspection of the rental unit and collected samples that were later inspected by microscope. According to the report:

grab samples are analysed to have: **High fungal CFU density** fungal contamination **elevated risk to health with exposure of sensitive individuals** **elevated (fungal contamination evident) – Professional Fungal Remediation**
(reproduced as written)

The inspector found some mould behind a baseboard in the bathroom of the rental unit and in a storage area. Under the heading "HealthRisk:" the report said: "elevated risk to health with exposure of sensitive individuals". The report recommended remediation by a "Professional Fungal Remediator". This was described as a one day job that would cost \$2,100.00.

It was on the strength of this report that the tenants moved out of the rental unit without giving proper notice.

The landlord claimed that the tenants cause extensive damage to the rental unit. He testified that the tenants placed an indoor welcome mat outside the entrance to the rental unit. The mat disintegrated and blocked the perimeter drain that it covered with the effect that water entered the rental unit and damaged the laminate flooring. The landlord testified that the rental unit fully renovated in 2005. He testified that the so called "storage room" used by the tenants was off limits to the tenants. The insulated

door that separated the room from the bedroom was to remain closed and locked. The room had an earthen floor and it was not heated or ventilated; it housed the perimeter drain sump for the rental property and it is not unexpected that mould was present in the area, but that did not impact the habitability of the rental unit. The landlord testified that fungal stains in the bathroom resulted from the tenants' incorrect installation of a handheld showerhead. The showerhead leaked and the water stained the drywall and pooled on the floor.

The landlord complained that the tenants' mould inspectors damaged the rental unit by removing and not replacing baseboards and caused drywall damage taking samples. The landlord claimed payment of the sum of \$8,374.00 made up of \$1,200.00 lost rent, \$6,510 claimed for: "Damages & Repairs" and additional amounts of \$100.00 for garbage removal, \$25 for stove cleaning \$500 for a rear fence and \$39 for a showerhead. In a later submission the landlord provided two estimates for repairs, one in the amount of \$8,275 and the second in the amount of \$6,543.90. The quoted repairs included replacement of laminate flooring repair of internet and cable wiring, patching, painting and wallpaper removal in several rooms, repair of a fence and gate, replacement of baseboards and door casings and a cabinet repair.

The landlord submitted photographs of what he claimed was damage caused by the tenants, including unauthorized painting and wallpapering in some areas of the rental unit.

The tenant testified that she did not place the welcome mat at the entrance to the rental unit; it was there when the tenants moved in and must have been put there by a previous tenant. She said the landlord did not tell her that there was a drain located under the mat. The tenant denied causing damage to a window ledge. She testified that she did not keep a cat contrary to the landlord's claim and if there was damage to a window sill caused by a cat it must have been caused by the previous tenant's pet. The tenant said that when she moved in the former tenant was moving to another unit in the rental property on the second level. She said that contrary to the landlord's testimony the tenants did not put up shelving; it was already installed when they moved in. She said that the landlord gave his permission to the tenants to repaint portions of the rental unit. The tenants repainted a room that was originally painted bright green. The room was wallpapered and painted red.

The landlord did not submit any evidence to show that he performed repairs, replaced the floor or repainted the rental unit before re-renting it. I was not provided with a form of condition inspection report, either upon the tenants' moving in or moving out.

Analysis and conclusion

In *R. v. Mohan*, [1994] 2 S.C.R. 9, at p. 16, Sopinka J. enumerated the following criteria for the acceptance of expert evidence by a trier of fact:

Admission of expert evidence depends on the application of the following criteria:

- (a) relevance;
- (b) necessity in assisting the trier of fact;
- (c) the absence of any exclusionary rule;
- (d) a properly qualified expert.

With respect to the last criteria he said:

Finally the evidence must be given by a witness who is shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify.

The report submitted by the tenants does not contain any statement as to the expertise or qualifications of the authors save for the letter designations: CQE and CMRC, CMI, CMR, CIAQS and the notation that one of the authors has the degree Hon. B.Sc. and is described as an "Environmental Scientist". There is no mention in the report of any specialized knowledge, training or experience possessed by any of the authors that would qualify them as "mould experts" I do not consider that it has been shown that the report's authors have special knowledge of mould, its toxicity or its remediation. I do not accept that the report should be accepted as based on expertise that lends credence to the conclusions expressed. The report is salted with technical terms and enigmatic remarks such as: "Air quality in this area is impacted by: Visible fungal amplification", but there is little in the way of actual explanation or analysis. I do not accept that the report has established that toxic mould was present in the rental unit or that the tenants were justified in moving out of the rental unit due to the presence of toxic mould.

I find that the tenants have not established that they were justified in moving out of the rental unit without giving proper notice and before the end of the fixed term tenancy. I find, as stated by the landlord that the tenants used an unapproved area to store certain of their belongings. The fact that there may have been some mould present in the area the tenants used for storage does not establish that the rental unit was unfit for habitation. It is not surprising that there were some traces of mould in the damp environment of a bathroom, but the tenant's evidence has not shown that there was toxic mould, or that the presence of mould justified the tenants' decision to move without notice. The tenant's claim for compensation is dismissed without leave to reapply. I do not award a filing fee to the tenants.

With respect to the landlord's claim, I find that tenants breached their fixed term tenancy agreement that obliged them to continue as tenants until August 31, 2010. I award the landlord loss of revenue for the month of June in the amount of \$1,300.00. The landlord has not claimed loss of revenue for any subsequent month and in any event has not provided evidence of his efforts to mitigate his loss; I therefore limit the award to \$1,300.00.

The landlord claimed that the tenants placed a mat at the entrance to the rental unit that plugged the drain and they are therefore responsible for the damage to the laminate flooring caused by water entering the unit. The tenants vehemently denied having put the mat at the entrance. The tenant said the mat was present when the tenancy began and nobody told them that there was a drain located at the entrance. I accept the tenant's evidence that she did not place the mat and that it was present when the tenancy began. There was no condition inspection report created at the beginning of the tenancy and no document or picture to show the entrance way as it was at the beginning of the tenancy. The landlord has not proven on a balance of probabilities that the tenants placed the mat or that they were responsible for water damage to the floor; the landlord's claim for replacement of the laminate floor is denied.

The landlord claimed payment of \$6,510 to repair damage. There is no evidence to show that the landlord has performed the repairs or what the actual repair and painting costs might have been. I have reviewed the landlord's photographic evidence and I find that the costs claimed for drywall repairs and painting to be inflated. I find that the tenants did cause some damage to the walls and ceiling. Either the tenants or the mould inspector caused damage by removing baseboards and the tenants did repaint parts of the rental unit without the express permission of the landlord, but the landlord

has not shown that the unit was repainted or that repainting was necessary in order to re-rent the unit.

I am not satisfied that the landlord intends to have the quoted work performed, or that the amounts claimed are reasonable estimates. For example the landlord has claimed the sum of \$500.00 to fix and paint a small bathroom and a like amount to repair and paint a ceiling. In the absence of proof of actual repair costs I award the following amounts to the landlord:

\$25.00 for stove cleaning
\$39.00 for showerhead replacement
\$50.00 for garbage removal
\$600.00 for wall repairs and painting

I find the landlord's other claims, including gate and fence repairs and windowsill damage to be unproved and they are denied.

The total award to the landlord is the sum of \$2,014. The landlord is entitled to recover \$50.00 of the \$100.00 fee paid for his application for a total award of \$2,064.00 I order that the landlord retain the tenants' security deposit and interest of \$650.00 in partial satisfaction of this award and I grant the landlord a monetary order pursuant to section 67 in the amount of \$1,414.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Dated: February 28, 2011.
