



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord. The tenant's application filed November 2, 2010 seeks:

1. A monetary award for compensation for damage or loss;
2. An order to recover the security deposit;
3. An Order to recover the filing fee; and
4. Other.

Total monetary award sought by the tenant is \$18,024.00.

The landlord's application filed November 17, 2010 seeks:

1. A monetary award for compensation for damage or loss;
2. An order to recover the security deposit;
3. An Order to recover the filing fee; and
4. Other.

Total monetary award sought by the landlord is \$958.20.

Both parties appeared the hearing and gave evidence under oath.

Issue(s) to be Decided

Is either party entitled to the orders sought?

Background and Evidence

In her Application for Dispute Resolution the tenant states that the landlord was advised of a possible health problem stemming from mildew or mould. The tenant says the landlord "...totally refused..." to give any consideration to the matter. Accordingly the tenant gave notice on October 1 intending to vacate the premises. The tenant's father

wrote to the landlord on October 1, 2010 confirming that they would be "...evacuating..." the rental unit and noting that they too have checked with other tenants who have been complaining of the same issues. In the October 1st letter the tenant's father noted that his daughter had been very ill due to the mildew/mould that was building up in the rental unit and noted that his wife became ill as a result of the odour in the rental unit. The tenant's father requested the immediate refund of the security deposit minus the rent due and added a P.S.:

This is a serious health issue, and you have refused to take corrective steps, despite repeated requests from other tenants!

The tenant's father testified that because the landlord refused to take steps to rectify the problem he reported the matter to the City officials. A subsequent inspection by the City Vancouver Health Inspectors confirmed that there was a great deal of mould in the rental unit. On October 26th the landlord's father says the City inspector left him a voicemail message stating, in part that

...we will be making the owner go through and hire the Environmental consultant to do a mold analysis and then with that they give a remediation requests, housing how they have to remove the mold and remove drywall and prepare it properly. Will be posting that room as a 'do not occupy'

(Reproduced as written)

The tenant also produced a letter dated November 1, 2010 from the City of Vancouver noting that they had been advised by the tenants of unit #1 that they would be vacating the rental unit as of October 31, 2010 and advising the landlord that unit #1 cannot be re-occupied until the issue with water infiltration and mould contamination has been resolved.

The landlord submits that the first time she heard of mould in the rental unit was October 1, 2010 when the tenant's father phoned her.

On October 2, 2010 the landlord says she had a conversation with the tenant's boyfriend. The landlord says she asked the tenant's boyfriend about the mould and he confirmed that there was mould but they did not think it a big enough issue to tell the landlord and they just washed down the area with a bleach solution.

By October 3, 2010 the rent due October 1 had not been paid. The landlord then served a 10 day Notice to End Tenancy for unpaid rent and posted it to the rental unit door.

The landlord says that on October 3, 2010 she received the tenant's father's letter dated October 1, 2010 some of which is detailed above.

On October 27, 2010 the landlord says she received complaints from her other tenants that there was a letter circulating around the building from the father of this tenant providing an inspectional survey to determine if there is mould in their rental units.

On November 1, 2010 the landlord received a "Do Not Occupy" Order dated November with respect to the rental unit ordering that this portion of the rental unit not be occupied until the building confirms to the requirements of the applicable by-law.

The landlord says that on November 10, 2010 A-1 Drainage prepared a video inspection of the property and commenced an excavation by jack hammer which exposed a broken drain tile. The roots from a tree at the corner of the property had collapsed a pipe. Work by A-1 was completed on November 12, 2010. On November 16, 2010 Monkey Tree Services attended to remove the problem tree. On November 24, 2010 Pro-Rooter completed further repairs. In a report prepared for the City of Vancouver on January 19, 2011 it was noted that the "...original clay drain-tile installed adjacent to this residential unit were partly damaged, partly clogged with silt and roots of a tree; and did not adequately drain the ground water (at shallow depth) away from the soil around the apartment. Therefore the exterior soils against the concrete foundation wall remained moist..." the report details the mould growth noting "...that the bleaching agents and soap removed the mould on the drywall we inferred that the mould growth was not deep and was not extensive..." and that "...random observations through a hole cut in the drywall, wood studs behind the drywall did not seem to have any mould growth and do not need to be treated or removed. Also exterior face of the drywall (inspected randomly) did not show mould growth..." The report goes on to say that "...the cause of the mould growth is the excessive condensation on the cold surfaces at the interior, near the window." The report details how to disinfect the surfaces and air and ends with "We confirm that the apartment (Unit #1) has been adequately cleaned and disinfected and is free of any toxic substances, moulds or fungi".

The landlord also submitted the Condition Inspection Report prepared on March 30, 2008, at the start of this tenancy. The landlord notes that there is no notation regarding mould in the report.

The landlord submits that had she been told of the mould problem she would have taken immediate steps as she did once she was informed. The landlord says that in choosing to report the matter to the City instead of the landlord the tenants caused the landlord to lose rent for the period November to January. The landlord points out that the rental unit was fully repaired by November 16, 2010 however it could not be re-rented until clearance was received from the City and this was not completed until January 23 2011. The landlord sought to amend her original application to seek loss of rent for November- January totalling \$2,850.00 in addition to her original application for \$958.20 for October arrears (\$475.00), cleaning (\$100.00), replacement of exhaust fan (\$25.00) and painting/repairing holes in the rental unit (\$350.00).

Analysis

The facts are that this tenancy began in 2008 and ended sometime between October 1-3, 2010 after the tenant's father advised the landlord he was removing his daughter from the rental unit because she was ill due to mould.

The tenant now claims \$18,024.00 because the landlord "...refused to give any consideration at all to a possible problem..." with mould as a result of which his daughter suffered medical problems and lost items of value. Although the tenant has failed to supply an accounting of her losses or medical records to support that she has suffered ill effects from mould.

The evidence of the landlord is that the first time she heard that there was a mould problem was on October 1, 2010 when she spoke with the tenant's father. While the tenant's father says that other tenants in the building were also complaining of mould, he has supplied insufficient evidence to support this claim. In fact, the tenant has filed insufficient evidence to show that she reported any such problems to the landlord herself. Further, while the tenant's father says the landlord "...refused to give any consideration at all to a possible problem..." the evidence shows that within 2 weeks of being notified of the problem the landlord undertook extensive, expensive investigatory and remedial work to remove a tree and repair drain tiles that were causing the condensation that caused the mould in the rental unit.

The tenant's father states that the landlord was negligent in not inspecting the premises and had she does so she would have been able to determine that there was old tree roots wrapped around a buried pipe causing damage to the drain tiles resulting in condensation in the rental unit which causes mould. However, the landlord's duty to inspect and maintain does not extend to digging up the property to inspect tree roots,

drain tiles and piping. In fact, one of the means by which a landlord becomes aware that there are problems in a rental unit is when tenants report problems. In this case there is no evidence that the tenant reported any mould problems to the landlord. The evidence shows that her father arrived and "...evacuated..." her that day without notice to the landlord and, based on the evidence of the landlord without cleaning or making repairs to the damage she caused to the rental unit while she was residing there.

Overall I find that the tenant has failed in her burden of proving her claim or of proving her damages. The tenant's claim is therefore dismissed.

With respect to the landlord's claim the evidence shows that the tenant vacated without proper notice however, shortly thereafter it was determined by the City that the rental unit was could not be occupied. Because of the City's determination I find that the tenant should not have to pay rent for October 2010. The landlord claims cleaning and repainting costs and, based on the landlord's photographs, I find that the rental unit was not properly cleaned. I will allow the landlord the sum of \$100.00 for cleaning, \$25.00 for replacing the exhaust fan filter on the stove and unpaid utilities of \$8.20. I am not satisfied that the rental unit required painting and I dismiss the landlord's portion of this claim. With respect to the landlord's request to amend her claim to include loss of rent for the period November-January, I find that the tenant has not had proper notice of this claim and it is also dismissed.

With respect to the tenants request for recovery of her security deposit, the evidence is that tenant paid a deposit of \$950.00 on April 1, 2008. With interest to date that deposit is now valued at \$960.71. I direct the landlord to deduct \$133.20 as awarded above from the deposit and return the sum of \$827.51 to the tenant forthwith.

As neither party has been completely successful I decline to award recovery of the filing fee to either party.

Conclusion

The tenant is provided with a formal copy of an order for the total monetary award as set out above. Should the landlord fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial Court of British Columbia.