Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenants: MNR, MNDC, MNSD, FF
Landlords: MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Tenants to recover the cost of emergency repairs, for compensation for damage or loss under the Act or tenancy agreement, for the return of a security deposit and pet damage deposit and to recover the filing fee for this proceeding. The Landlords applied for compensation for locksmith fees, to recover the filing fee for this proceeding and to keep part of the Tenants' security deposit and pet damage deposit in payment of those amounts.

Issue(s) to be Decided

1. Are the Tenants entitled to compensation and if so, how much?
2. Are the Tenants entitled to the return of a security deposit and pet damage deposit?
3. Are the Landlords entitled to compensation and if so, how much?

Background and Evidence

This fixed term tenancy started on May 15, 2011, expired on August 31, 2011 and continued thereafter as a month-to-month tenancy. The Tenants moved out of the rental unit on September 17, 2011 and removed their all of their belongings from inside the rental unit as of October 5, 2011. Rent was $2,500.00 per month payable in advance on the 1st day of each month. The Tenants paid a security deposit of $1,250.00 and a pet deposit of $200.00 at the beginning of the tenancy.

Tenants' Claim:

The Tenants claimed that in mid-August 2011 they noticed a water leak in the dining room / hallway area of the ceiling and on August 24, 2011 they reported it to the Landlord's agent because it had developed into a large water "bubble." The Tenants said on August 30, 2011, the drywall of the ceiling in that area fell in and an agent for the Landlords looked at the damage that day with the Tenants. The Tenants said they were going away for the long weekend and the Landlord's agent assured them that she

would attend to having the damage repaired. The Tenants said that when they returned to the rental unit on September 5, 2011, nothing had been done and the section of damaged drywall was still lying on the floor. The Tenants said the interior smelled strongly of mould and so much moisture had accumulated in the rental unit that the front door had swollen shut.

The Tenants said they contacted the resident manager and asked to have some dehumidifiers set up. The Tenants said the damaged area of the ceiling was repaired by September 12, 2011 however they had reservations because they could see that the insulation in the area surrounding the damaged area of the ceiling was still wet. The Tenants said on September 17, 2011, a second leak occurred adjacent to the first area of damage and that section of the ceiling also fell in. The Tenants said at this time, they could clearly see black mould in the insulation. The Tenants said they also discovered that some furnishings and clothing in the closets were covered in mould. The Tenants said one of their children has an auto-immune condition and they did not believe the rental unit was fit to live in so they vacated the rental unit that day.

The Tenants said they were unsuccessful in their attempts to contact an agent for the Landlords and had to leave a telephone message about the 2nd leak. The Tenants said they also sent an e-mail on September 19, 2011 advising the Landlord's agent that they had had to seek other accommodations due to the unhealthy condition of the rental unit. The Tenants said they City of Vancouver inspected other suites in the rental property and the rental unit on September 20, 2011 and confirmed the presence of mould (which is set out in a letter dated September 21, 2011 to that effect).

On September 28, 2011, the Landlord's property manager (S.W.) sent the Tenants a letter advising them that they could have moved temporarily into another suite in another building on the rental property and in doing so could have taken advantage of a compensation package. S.W. offered the Tenants compensation of $500.00 as a good will gesture for their "inconvenience" and waived rent for October 2011 provided that the Tenants vacated by October 8, 2011. S.W. confirmed that the rental unit would remain vacant until the building was demolished.

The Tenants argued that $500.00 was insufficient to compensate them for the expenses they incurred due to the condition of the rental unit. The Tenants said they had to make an insurance claim and incur a deductable fee of $500.00 in order to have all of their belongings sanitized to remove mould spores as they did not want to transport them to their new accommodations. The Tenants said their temporary accommodation was a basement suite in a house they had just purchased. The Tenants said because the house was undergoing renovations, they had to use the basement suite as their temporary accommodations from September 17, 2011 to November 1, 2011. The Tenants said they had planned to rent out the basement suite for October 1, 2011 at a rental rate of $1,100.00 per month but were unable to do so and lost that rental income.

The Tenants claimed that the Landlords were well aware that the roof in the rental property was leaking and that there was mould throughout creating a health hazard.

Consequently the Tenants argued that the Landlords should not have rented out the rental unit because it was not fit for occupation and they sought the return of their rent payment for September 2011.

The Landlords acknowledged that there were plans to demolish the building (Phase 1) in which the rental unit was located and that once suites were vacated they would not be re-rented. Consequently, the Landlords claimed that all tenants of Phase 1 were given a document entitled, "Incentive Program for Tenants" dated September 29, 2010 that outlined three options available to tenants as follows:

- Option 1: temporarily re-locate to Phase 2 and return to Phase 1 when it is completed and receive a compensation package which includes one month's rent, a moving out allowance (of between $1,250.00 and $1,750.00) and a moving in allowance when returning to Phase 1.

- Option2: temporarily re-locate to other accommodations and return to Phase 1 and receive a compensation package which includes one month's rent, a pro-rated rent refund, a moving out allowance (of between $1,250.00 and $1,750.00) and a moving in allowance.

- Option 3: upon receipt of a demolition notice, leave the rental property permanently and receive one month's rent, a moving out allowance (of between $1,250.00 and $1,750.00) and a pro-rated rent refund.

The Landlords argued that the Landlords would have compensated the Tenants had they remained on site however they chose instead to move out without any notice to the Landlords. The Landlords said on October 13, 2011, they sent the Tenants a cheque in the amount of $1,840.00 which was based on the following calculation:

	Security deposit refund:	$1,250.00
	Pet deposit refund:	$200.00
	Goodwill Payment:	$500.00
	Key fob deposit refund:	$40.00
	Subtotal:	$1,990.00
Less:	Locksmith fees:	($100.00)
	Filing fee for hearing:	($50.00)
	Payment to Tenants:	$1,840.00

The Landlord's agent argued that there was a term of the tenancy agreement requiring the Tenants to have insurance and that the Tenants provided no evidence that they paid an insurance deductable fee of $500.00. The Landlord's agent also argued that the Tenants were compensated $500.00 for their "inconvenience" in September 2011. The Landlord's agent further argued that the Tenants should not be entitled to compensation for rent for October 2011 because they were never charged rent for October by the Landlords.

Landlords' Claim:

The Landlord's agent said the Tenants did not return their keys to the rental unit at the end of the tenancy and as a result, the Landlords incurred locksmith fees of $100.00 to change the locks. The Tenants admitted that they did not return all of the copies of the keys that they had but they said they left a key to the rental unit in a lock box and advised the property manager of this in a letter to her dated October 5, 2011. The Tenants argued that it did not matter if they returned all of the copies of the keys because they were advised that the rental unit was not going to be rented out again prior to demolition.

Analysis

Tenants' Claim:

Section 32(1) of the Act says "a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant."

Section 7(1) of the Act says that "if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results." This however is subject to a Party's duty to mitigate their damages under s. 7(2) of the Act.

The Tenants argued that the Landlord was aware of problems with the condition of the rental unit and should not have rented it out because it was unfit for occupation. The Tenants said they did not discover the extent of the problem with the leaking roof and mould until the ceiling began to show signs of water damage in mid-August. The Tenants said the Landlords then tried to conceal the extent of the water and mould damage by making a poor repair to the ceiling with the result that it collapsed again within a 2 week period. The Landlords' incentive program document indicates that as early as September 29, 2010, the corporate Landlord was making plans to relocate residents so that it could demolish the property. The letter of the City Inspector dated September 21, 2011 noted as follows:

> "*Ceiling of 2nd storey living room [*in the rental unit*] has collapsed for second time as roof continues to leak despite attempts by* [the Landlord] *to repair over at least 14 months...property managers continue to deny mould problems that are evident to this inspector in adjacent town house units [who] have avoided black mould on walls by installing de-humidifiers and washing walls with bleach.* [The Landlord] *ha[s] been painting each unit between frequent re-lettings*."

As a result of this inspection, the Municipality issued a letter to the Landlord dated September 29, 2011 noting that the Landlord was in violation of the Building By-Law and it was ordered to repair the roof leak and the damaged ceiling. In a letter from the Landlord's property manager to the Tenants dated October 17, 2011, the Landlord stated that it would no longer be re-renting vacated suites in the rental property.

On the basis of the foregoing, I find that the Landlords were aware of the problems with the roof leaking and mould in the rental property and although they were making plans to demolish the property, they rented it to the Tenants. Consequently, I conclude that the rental unit was unfit for occupation when the ceiling fell in for the first time on August 30, 2011 and at that time, the Landlords should have offered the Tenants alternate accommodations. The Tenants said (and I find) that they left telephone messages for the Landlords' agent on September 17, 2011 and by e-mail on September 19, 2011 that due to the collapse of the ceiling and the mould they had to leave the rental. The Landlord's agent admitted that the Tenants also approached her about these matters but she claimed she was not in a position to offer them alternate accommodations and instead referred them to the property manager. It was not until September 28, 2011 that the property manager responded to the Tenants advising them that they could have taken advantage of the relocation options. Consequently, I conclude that as of September 17, 2011 (when the ceiling fell in for a second time), the Tenants had no choice but to find other accommodations.

I also find the Landlords' argument that the Tenants were not entitled to compensation because they did not relocate to another building on the rental property is inaccurate. The Landlords' own literature indicates that if a tenant received a demolition order, they could move from the rental property and still receive compensation. In essence, the Landlord appears to be arguing that although the rental unit was not fit to be re-rented or occupied and would be demolished, the Tenants were not entitled to compensation because they did not receive a demolition order from the Landlord. In any event, I find that the Tenants are entitled to compensation under the Act as a result of the Landlord's breach of s. 32 of the Act by failing to provide the Tenants with living accommodations that were suitable for occupation.

In particular, I find that the Tenants lost the use and enjoyment of the rental unit for substantially all of September 2011 and they are therefore entitled to the return of their rent payment for that month in the amount of $2,500.00. I also find that the Tenants are entitled to compensation equivalent to one-half of their accommodation expenses for October 2011 of $500.00. I make this finding having regard to the discussion in the previous paragraph and in particular because it would be unfair to allow the Landlords to withhold compensation from a tenant on the basis that they had not been given a demolition notice notwithstanding that the rental unit was unfit for occupation.

Although the Landlords argued that there is a term in the tenancy agreement requiring the Tenants to have insurance, I find that the purpose of this clause is to protect the Landlord from incurring large compensation claims and does not function to shield it

from compensating a tenant for their insurance deductable expenses. Accordingly, I find that the Tenants would have been entitled to recover one-half of their insurance deductable expenses of $250.00 however they provided no evidence that they had incurred this expense and as a result, this part of their claim is dismissed without leave to reapply. The Tenants are entitled pursuant to s. 72 of the Act to recover from the Landlords the $50.00 filing fee they paid for this proceeding.

The Landlords' Claim:

Section 37(2)(b) of the Act says "*when a tenant vacates a rental unit, the tenant must give the Landlord **all** of the keys or other means of access that are in the possession* or control of the tenant and that allow access to and within the residential property."

The Tenants argued that although they did not return all of the copies of the keys in their possession, the Landlords did receive a key to gain access to the rental unit and they also argued that it was irrelevant given that the rental unit would not be re-rented. I find however, that the Landlords were entitled to recover all of the keys in the Tenants' possession given that there were still other residents in the rental property and the Landlords still had an interest in securing and safekeeping the property until such time as it was fully vacated.

In support of its claim, however, the Landlords provided an invoice for deadbolts and a key blank dated ***September 11, 2011*** on which was hand-written "+ labor = $100.00." As a result, I find that the locks were purchased ***before*** the Tenants even moved out and there is nothing on the document to identify the unit for which these expenses were allegedly incurred. Consequently, I find that there is insufficient evidence to support the Landlords' claim for changing locks and it is dismissed in its entirety without leave to reapply.

The Parties agree that the Landlords have returned the Tenants' security deposit, pet deposit, key fob deposit and some compensation in a total amount of $1,840.00. Consequently, I find that the Tenants are entitled to a Monetary Order as follows:

	September 2011 Rent:	$2,500.00
	½ Month's Rent Compensation:	$500.00
	Security Deposit:	$1,250.00
	Pet Deposit:	$200.00
	Key Fob Deposit	$40.00
	Filing Fee:	$50.00
	Subtotal:	$4,540.00
Less:	Payment Oct. 13/2011:	($1,840.00)
	Balance Owing:	$2,700.00

Conclusion

A Monetary Order in the amount of **$2,700.00** has been issued to the Tenants and a copy of it must be served on the Landlords. If the amount is not paid by the Landlords, the Order may be filed in the Provincial (Small Claims) Court of British Columbia 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: January 17, 2012.

Residential Tenancy Branch