Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt cross applications by the landlord and tenant. The application by the tenant is for money owed or compensation due to damage or loss. The application by the landlord is for a monetary order for damage to the unit, a monetary order for unpaid rent, money owed or compensation due to damage or loss, other and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to the above under the Act.

Background and Evidence

This matter has been adjourned on two separate occasions to allow the parties' time to review the others late evidence.

This tenancy began October 16, 2011 with monthly rent of $1050.00 and the tenant paid a security deposit of $525.00.

On December 30, 2011 the tenant contacted the landlord by phone and advised him that due to a dangerously high mold level in the rental unit the tenant needed to immediately vacate. The tenant then did not pay the January 2012 rent and on January 3, 2012 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant acknowledged that they were still in possession of the rental unit as of January 14, 2012 and the landlord countered this testimony by stating that the tenant did not have all of her possessions removed from the rental property until January 25, 2012.

The tenant stated that after her family became very ill she thought something was wrong in the rental unit so the tenant in late December 2011 had the air quality in the rental unit tested by a hazmat company. The tenant acknowledged that this hazmat

company is owned and operated by her father in-law and is not accredited to test for mold contamination. When the air quality tests were completed the hazmat company contacted an independent analytical laboratory to have the test results interpreted. The hazmat company then, based on the phone discussion with the independent analytical laboratory, determined the mold spore count to be dangerously high and posted the rental unit with a warning notice and that no one was to enter unless wearing protective gear.

The following day the landlord saw that the tenant's mother was still at the rental property and requested access to the rental unit to conduct their own inspection however the tenant denied the landlord access. The tenant then hired the same hazmat company to pack and remove all of the tenant's personal items from the rental unit as the rental unit was at this time deemed unfit to enter.

The tenant referred to the on-going health issues that she, her mother and child all suffered while in the rental unit and submitted into evidence, an assessment of their health concerns for the months of November, December 2011 and January 2012. The tenant maintained that these serious health concerns started just days after taking occupancy of the rental unit and that since they vacated the rental unit, their health problems have cleared up. The tenant's evidence refers to upper respiratory tract problems, tonsillitis and depression.

The landlord did point out that on one visit to the doctor the tenant's child's chest was found to be clear and that on another visit the tenant was advised to keep the child away from the tenant's 3 pets. The landlord also stated that there is no evidence that conclusively ties mold in the rental unit to the health problems claimed by the tenant. The landlord stated that they believed the tenant simply wanted out of the tenancy as her husband worked in a far north location.

On January 8, 2012 the landlord's contractor inspected the rental unit and found no sign of mold. The landlord then on January 20, 2012 hired a company that specializes in testing for mold and then had the test results reviewed and a report prepared by an independent company with accreditation as a certified industrial hygienist, certified safety professional and certified public health inspector. The tenant had these same test results reviewed by an independent company that specializes in mold detection and remediation. The tenant expressed concern that the 2 companies hired by the landlord referred clients to each other however the tenant also spoke to the limited number of accredited /certified mold testing companies in the lower mainland of British Columbia.

The landlord referred to a statement in the tenant's evidence whereby the tenant claims that the landlord's contractor told the tenant that the rental unit had mold. The landlord stated that his contractor had entered a statement into evidence whereby the contractor clearly states that he did not at any time tell the tenant that there was mold in the rental unit. The landlord expressed concern about the company hired by the tenant to test for mold as this company is owned and operated by the tenant's father in-law and is not certified to do mold testing.

The landlord stated that the tests ordered by the landlord showed that there was no mold in the rental unit and therefore no health hazard. The tenant maintained that there was mold and a health hazard in the rental unit and stated that she was also aware that there were no guidelines in place for mold contamination/levels by either the medical or scientific community.

The landlord testified that after the tenant called to say that there was mold in the rental unit and that she would be immediately vacating, the tenant put a stop payment on the January 2012 rent cheque. The landlord also stated that because the tenant did not vacate the rental property until January 25, 2012, the landlord could not complete the necessary cleaning and repairs in the rental unit and suffered a loss of rental income for February 2012.

The landlord stated that upon vacating the rental unit that the tenant did not clean. The tenant stated that as she could not safely go back into the rental unit she had hired someone to do the cleaning however the tenant agreed with the landlord's claim that the rental unit was not left clean.

The landlord stated that they had to have their contractor come and re-light the pilot light on the furnace as the tenants had turned the furnace off when they vacated. The landlord stated that as it was winter they were concerned that the pipes in the rental unit would freeze. The tenant countered this claim by stating that the pilot light often went out and had to be re-lit and that they did not turn off the furnace when they left.

The landlord stated that the door was damaged, shelves in the laundry room had been removed and not replaced, there were scratches all over the hardwood floor and the tape used by the tenant to hold her rugs in place had pulled the varnish off the floor. The tenant acknowledged that the shelves in the laundry room had been taken down when the landlord agreed to place the tenants stacking washer/dryer in the laundry room. The tenant acknowledged that the shelves were not reinstalled as the tenant could not safely re-enter the rental unit.

The landlord stated that after the tenant insisted that there was mold in the wall of the living room, the landlord had a 3' by 3' area of wall opened to check. The landlord stated that the only water incursion in this area was from the improperly sealed hole for the satellite cable that the tenants had installed without the landlord's permission.

The landlord stated that all of the blinds had been removed from the windows so the tenant could put up her own draperies and that when the tenant vacated the blinds could not be found. The tenant stated that the blinds had been taken down with the landlord's permission as many of them were broken. The tenant stated that she left the blinds in the unsecured shed on the property and called the landlord to let him know that he could come pick them up. The tenant stated that after the blinds were placed in the shed she has no idea what happened to them.

The tenant in their claim is seeking $25,000.00 for the following:

- 2 ½ Months Rent - $2675.00
- Damage Deposit - $525.00
- CC Enviro Packing & Moving - $2105.60
- U Haul Boxes - $77.59
- U Haul Storage and Delivery - $1170.88
- Satellite tv contract - $290.00
- Gas and Food to Kitimat - $360.00
- Dig & Cat Boarding - $300.00
- Filing Fee - $100.00
- Cheque Cancellations - $12.00
- NSF Charge for January Rent - $42.50
- Disposable camera and registered mail - $47.00
- Registered mail - $40.00
- Suffering for effects of Mold 2 Adults, 1 Infant - $17,254.43

The landlord in their claim is seeking $25,000.00 for the following:

- January and February rent - $2140.00
- Pain and Suffering - $19228.95
- January Rent NSF - $42.50
- Lawyer Fees - $1250.00
- Filing Fee - $100.00
- Industrial Hygienist Report - $504.00
- Registered Mail - $30.00

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenant has not met the burden of proving that they have grounds for entitlement to a monetary order for money owed or compensation due to damage or loss.

The report prepared by the company hired by the tenant states *'the mobile home **may not be suitable** for occupancy'.* This company also states in their report that *'There are **no regulated exposure limits for fungal spore counts in Canada**'.* The report prepared by the company hired by the landlord states *'In summary our review of the report indicate that based on the findings of the onsite observation and a review of the sample results that **there did not appear to be** a mould issue in the home'*. The synopsis written by the tenant's doctor states *'the multiple upper respiratory and lower respiratory tract infections **could have been** due to the high mold count in the house'*.

The tenant also relies on being told by the landlord's contractor that there is/was mold in the rental unit and the contractor has submitted a written statement into evidence that

emphatically states this is to be false and that he did not say any such thing. The contractor goes on to state that after the tenant's father posted the mobile home as a hazard, entry for a 3rd party to test and verify the condition of the rental unit on behalf of the landlord was denied. Consideration must also be given to the fact that the tenant's claim for packing and removal of her personal belongings from the rental unit was done by the tenant's father's hazmat company and the person who the tenant paid to look after her pets is the project manager for the tenant's father's hazmat company.

It is impossible at best when looking at the reports prepared by the specialists to clearly determine whether or not there was a mold issue in the rental unit and that if there in fact was mold, that it was a direct contributor to the health issues suffered by the tenant and her family. With no definitive answer from the specialists in this regard, it would be punitive to enforce the tenant's claim against the landlord.

In regards to the tenant's concern about the companies hired by the landlord referring clients to each other, I find that there is no evidence what so ever that shows either of these companies having a vested interest in the outcome of these claims.

There are also portions of the tenant's claim that were incurred as part of the preparation for this application IE: disposable camera, registered mail and per Section 72 of the Act, with the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute.

A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that this claim rises to that requirement. Therefore the tenant's claim for suffering from the effects of mold is dismissed without leave to reapply.

The tenant's application is dismissed in its entirety without leave to reapply.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for cleaning costs, damages to the rental unit and unpaid rent.

The landlord has established that the tenant vacated the rental unit without giving proper notice to the landlord and as the tenant had possession of the rental unit until January 25, 2012. This resulted in possession of the rental unit for the landlord being delayed and completion of the required cleaning and repairs delayed. Therefore the landlord is entitled to recovery of the January and February 2012 rent in the amount of **$2100.00.** As the landlord has not provided a copy of the tenancy agreement that notes a charge for NSF cheques, that portion of the landlord's claim is dismissed without leave to reapply.

In regards to the landlord's $110.00 claim for re-lighting the furnace, and based on directly conflicting testimony from the parties, I find that the landlord is entitled to compensation in the limited amount of **$50.00.**

In regards to the landlord's $200.00 claim for cleaning costs and as the tenant agreed that the rental unit had not been thoroughly cleaned, I find that the landlord is entitled to compensation in the amount of **$200.00.**

In regards to the landlord's $914.55 claim for damages and repairs and as the laundry shelf simply had to be re-installed, I find that the landlord is entitled to compensation in the limited amount of **$839.55.**

In regards to the landlord's claim for replacement of the blinds and taking into consideration the reported poor condition of the blinds, I find that the landlord is entitled to compensation in the limited amount of **$240.00.**

There are also portions of the landlord's claim that were incurred as part of the preparation for this application IE: lawyer fees, CIH report, registered mail and per Section 72 of the Act, with the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute.

A claim in Tort is a personal wrong caused either intentionally or unintentionally and in all cases, the applicant must show that the respondent breached the care owed to him or her and that the loss claim was a foreseeable result of the wrong. I do not find on a balance of probabilities that this claim rises to that requirement. Therefore the landlord's claim for pain and suffering is dismissed without leave to reapply.

Accordingly I find that the landlord is entitled to a monetary order for $3429.55.

I decline to make an order regarding the filing fees and each party will assume responsibility for the costs associated with their application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I find that the landlord has established a monetary claim for $3429.55 for cleaning costs, damages and unpaid rent. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's $525.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **$2904.55**.

If the amount is not paid by the tenant(s), 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: April 4, 2012

Residential Tenancy Branch