



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Remax Anchor
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC O

Introduction

This hearing dealt with an application by the tenants for monetary compensation for damage or loss under the Act, regulation or tenancy agreement. Both tenants, two landlords and two agents for the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Are the tenants entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on November 1, 2012 as a one-year fixed-term tenancy with monthly rent in the amount of \$1200. The rental unit is a one-level, single family dwelling. The landlord and the tenants carried out a joint move-in inspection and completed a condition inspection report on October 19, 2012. The tenants began to move into the rental unit in late October 2012. The landlord and the tenants carried out a joint move-out inspection and completed a condition inspection report on January 30, 2013, and the tenancy ended on that date.

Tenants' Evidence

The tenants have claimed monetary compensation on the basis that there were significant moisture and mould problems in the rental unit that ultimately forced the tenants to move out.

The tenants stated that at the outset of the tenancy, the agent for the landlord informed the tenants that there was a slight moisture problem in the unit. Shortly after moving into the unit, the tenants realized that the problem was much more severe. The tenants stated that the unit was very difficult to heat, and there was so much condensation on the windows that the tenants had to spend 30 to 45 minutes every day wiping down the windows. There was always condensation, the house was always cold, and the towels would not dry.

In mid-November both tenants came down with the flu. Following the flu they both had coughs that they could not shake off. On November 23, 2012 the female tenant had surgery, after which she could not wipe down the moisture every day. The tenants stated that they saw mould start to quickly develop. On December 1, 2012 the male tenant pulled up the blind in the master bedroom and discovered thick black mould along the top of the window frame. The tenants stated that they believed such mould must have been present before the tenants moved into the rental unit.

On December 2, 2012 the tenants emailed the property manager their concerns regarding the rental unit, including the fact that it was cold and damp despite their attempts to heat it using electric heaters and a wood stove; they had discovered mould; and they did not have the time to wipe down the windows every day. The property manager responded to say that she would forward the tenants' concerns to the owners for their input. On December 3, 2012 the property manager emailed the tenants again and suggested to the tenants that they should keep the bathroom fans turned on and keep the windows open. On December 5, 2012 the tenants emailed the property manager to inform her that they did not want to make a cold house even colder by opening the windows, and they believed the house needed new windows.

On December 13, 2012, the male tenant attempted to clean the mould in the master bedroom. The tenants stated that the more he attempted to clean, the worse he began coughing. He coughed all night that night, and woke up feeling nauseated and had a very bad headache. The tenants operate a dance studio, but the male tenant, who is the instructor, had to cancel his private lessons.

On December 17, 2012 the male tenant went to see his doctor, and was diagnosed with a chest infection and prescribed antibiotics. The tenants submitted a note from the doctor, in which the doctor indicated that the male tenant "had an acute illness... compatible with an allergic reaction to mildew... I treated him for this and advised him to move out if mildew problem was not eradicated."

On December 18, 2012, the tenants emailed the property manager to inform her how bad the situation had become. In their email, the tenants stated that if the mould was not going to be removed professionally, they would be moving out and into a motel. On December 19, 2012, the property manager responded by email, stating that she had informed the owners of the tenants' concerns and would take the necessary steps to rectify the moisture problems by replacing the windows. As the property manager had not indicated that the mould would be professionally cleaned, the tenants moved into a motel. The tenants stayed in the motel for three nights, and then moved into a friend's house. The male tenant was still ill, and he returned to the doctor and was prescribed an additional inhaler.

The tenants hired a mould inspector to look at the rental unit, but when he arrived on December 26, 2012 they realized they knew him, and he offered to take a look at the unit and give his free opinion rather than charge for a report. On the basis of the mould inspector's opinion, the tenants determined that they would have to move out of the unit, and they emailed the property manager to inform her they would be moving as soon as possible.

The tenants stated that in their opinion, the moisture and mould problems were not a new issue to the owners or the property manager, and that the tenants signed the lease for the rental unit under false pretenses. The tenants have claimed the following monetary compensation:

- 1) \$3600 recovery of rent for 3 months
- 2) \$600 damage deposit
- 3) \$600 moving costs
- 4) \$784 in cancelled private lessons due to ill health
- 5) \$300 heating costs, including purchase of new heater for ensuite
- 6) \$30 cable hook-up and \$20 hydro reconnection
- 7) \$100 for prescriptions
- 8) \$7000 damages – for undue pain, stress and suffering over the Christmas period as well as the stress of finding a new home and moving again within three months
- 9) Estimated \$219 for storage
- 10) Estimated \$900 hotel accommodation for the month of January 2013

In support of their claim, the tenants provided notes from the doctor as well as their naturopath; photographs of mould in several locations in the rental unit; a copy of the dance studio schedule and an email from a student, showing cancelled lessons; a

prescription receipt, a change of address bill from Canada Post, hydro bills, a cable connection bill, motel bills for three nights and a moving bill.

Landlord's Response

The landlord does not believe that the tenants are entitled to any of their monetary claim. The landlord stated that they adequately compensated the tenants by allowing them out of the fixed-term lease.

The previous tenant in the rental unit stayed for two years, and did some wiping but never mentioned any mould. When the landlord and the tenants did a walk-through of the rental unit at the outset of the tenancy, the tenants did not see any problems. The landlord stated that from their point of view, the house was in good condition, and it was the tenants' responsibility to wipe the moisture and generally maintain the rental unit.

The landlord stated that as soon as they received complaints from the tenants they would start to rectify the problem. The landlord improved the heating efficiency, and offered the tenants a rent reduction of \$100 per month for six months, but the tenants refused to accept the offer. The landlord discovered that the windows were the problem, but it took some time to get the new windows in because the tenants were not cooperative in allowing contractors to access the rental unit. The landlord acknowledged that they are now replacing all of the windows in the rental unit, at a cost of \$22,000.

The landlord stated that the tenants had complaints from the day they moved in, and they believe the tenants just made up the problems, they did not have the heat on, and it was all in their minds. The landlord submitted that the tenants did not provide sufficient expert evidence regarding the mould or an in-depth diagnosis to establish a link between the tenants' health problems and mould.

The landlord stated that they received the tenant's forwarding address in writing on February 12, 2013 and returned the security deposit on February 19, 2013.

Analysis

Upon consideration of the evidence I find, on a balance of probabilities, that there was a significant moisture problem in the rental unit. Based on the evidence, I do not find that the landlord was aware, before the tenancy began, that the moisture problem was significant. Nor do I find that the tenants were negligent in their attempts to properly heat and maintain the unit. I find that the landlord took reasonable steps to address the problems with the rental unit once the tenants informed the landlord. Therefore, the landlord did not breach the Act, and the tenants are not entitled to compensation for any

damage or loss caused by a breach by the landlord. However, the rental unit was deficient due to the damp, inadequate heat, moisture and resulting mould, and I therefore find that the tenants are entitled to an abatement in rent for the deficiency.

The tenants have claimed recovery of the entire \$3600 they paid in rent for the three months they rented the unit. I do not find that this is a reasonable amount, as the tenants were able to at least make partial use of the rental unit despite the moisture and heat problems, and ultimately they were allowed to break the fixed term. I therefore find it reasonable to grant the tenants a rent abatement of half of the rent for three months, for a total of \$1800.

The tenants did not dispute that their security deposit was returned to them in accordance with the Act.

As the tenants were only partially successful in their application, I find they are not entitled to recovery of the filing fee for the cost of their application.

Conclusion

The tenants are entitled to a rent abatement of \$1800. The remainder of their application is dismissed.

I grant the tenants an order under section 67 for the balance due of \$1800. This order may be filed in the Small Claims Court 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 8, 2013

Residential Tenancy Branch

