



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to a successful application for Review Consideration filed by the landlord who sought a new hearing on the ground that they had new and relevant evidence unavailable at the original hearing of January 08, 2013. This Review Hearing was originally convened to deal with an Application by the tenant seeking rent abatement, damages for costs and losses, and return of the security deposit. The Review was granted on the basis of the landlord's new evidence and conditional: *to the exclusion of the portion of the original Decision establishing the tenant's right to double the amount of the security deposit.*

Both parties attended this Review hearing and were given opportunity to discuss their dispute with a view to its resolve, and present relevant evidence and make relevant submissions and ask questions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. Both parties confirmed receiving and possessing all the evidence of the other, including the new document evidence of the landlord and the tenant.

Issues to be Decided

Should the Decision and Order made January 31, 2013 in this matter be confirmed, varied or set aside?

Background and Evidence

The undisputed evidence is that the tenancy started in October 2010 and ended in December 2012. The hearing had benefit of the original hearing evidence. In addition, the hearing had benefit of new evidence from the tenant of a Building Inspection report (Tenant's Report) respecting the rental unit property – with an inspection date of December 29, 2012. As well, the hearing had benefit of new evidence from the landlord of a Home Inspection Report (Landlord's Report) respecting the rental unit property – with an inspection date of February 23, 2013.

The parties argued at length respecting the presence of conditions for mould within the rental unit and its propensity for injury to health and/or damage to the tenant's property.

As the genesis for this review hearing is the landlord's new and admissible inspection report; and now, the tenant's inspection report, the tenant first provided an overview of their evidence as applicant, focusing on specific particulars of their report. The tenant claims their report provides evidence the rental unit conditions provided a likely source of moisture and therefore mould.

The landlord provided an overview of their previous evidence and advanced testimony respecting their new inspection report, which they claim provides evidence the rental unit conditions, during the tenancy, could not have been a viable source for mould, and that their report states there is no evidence of prior moisture damage and no visible mould growth anywhere in the rental unit building, at the time of their inspection.

Analysis

The burden of proof lies with the applicant tenant to prove their claims. On preponderance of all the relevant new evidentiary submissions in this matter I make the following findings.

I have carefully considered both inspection reports of the parties provided as new and admissible evidence in this matter. I find the particulars of both these reports were not previously considered. It must be noted that neither report was supported by oral interpretation by the author of the report.

I find the tenant's inspection report is vague and frames findings within speculative, suggestive and inconclusive terminology, such as, "remaining suspect", "still remain questionable", and, "other problems may develop with time". I also find the report draws certain conclusions from low definition photographic images provided by the tenant, rather than from direct observation by the author of the report. I find that although this practice may be convenient it does not provide good evidence. I further find the report claims indicators of possible moisture, but it does not discover any mould. Effectively, I find the tenant's report does not provide any usable conclusions nor validation as to if injurious or damaging conditions within the rental unit existed at any time during the tenancy.

In respect to the landlord's report, I find it's focus is on the conditions, "at the time of the inspection", which was conducted 7 weeks after the original hearing of this matter, and 10 weeks after the tenancy ended. I find it was available to the landlord to provide such a report representing conditions current *during* the tenancy, but they did not. None the less, I accept the landlord's inspection report concludes that *during the inspection of the unit on February 23, 2013* there were no indications of a mould problem. I find the landlord's report is not relevant to the conditions prevalent during the tenant's occupation of the suite.

Having considered the new evidence of the inspection reports of both parties, I do not find either report helpful in verifying the conditions in the rental unit during the tenancy. I also find that neither report, even on balance of probabilities, provides significant rebuttal evidence to the other. In particular, I find the tenant's report does not prove that there were conditions in the rental unit *during the tenancy* injurious to the tenant's

health, or damaging to the tenant's belongings. And, I find the landlord's report in rebuttal does not prove the claimed conditions were prevalent in the rental unit *during the tenancy* 10 weeks before. As a result, I do not assign any significant evidentiary weight to either report.

Having considered the parties' new evidence and having found these submissions ineffective in determining this matter, I find that the original Decision, determined on the accepted remaining document and testimonial evidence in this matter, all before the Arbitrator for the hearing of January 08, 2013, remains valid.

As a result of all the above, I find no reason to vary or set aside the Decision and Order made January 31, 2013 in this matter.

Conclusion

The Decision and Order made January 31, 2013 **are confirmed and remain in effect.**

This Decision is final and binding on both parties.

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 22, 2013



Residential Tenancy Branch

RTB-136

All decisions are binding and both landlord and tenant are required to comply.

The RTB website (www.rto.gov.bc.ca) has information about:

- How and when to enforce an order of possession:
Fact Sheet RTB-103: *Landlord: Enforcing an Order of Possession*
- How and when to enforce a monetary order:
Fact Sheet RTB-108: *Enforcing a Monetary Order*
- How and when to have a decision or order corrected:
Fact Sheet RTB-111: *Correction of a Decision or Order*
- How and when to have a decision or order clarified:
Fact Sheet RTB-141: *Clarification of a Decision or Order*
- How and when to apply for the review of a decision:
Fact Sheet RTB-100: *Review Consideration of a Decision or Order*
(Please Note: Legislated deadlines apply)

To personally speak with Residential Tenancy Branch (RTB) staff or listen to our 24 Hour Recorded Information Line, please call:

- Toll-free: 1-800-665-8779
- Lower Mainland: 604-660-1020
- Victoria: 250-387-1602

Contact any Service BC Centre or visit the RTB office nearest you. For current information on locations and office hours, visit the RTB web site at www.rto.gov.bc.ca