



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 477362 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This was a hearing with respect to the tenants' application for a monetary order. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord's representative called in more than 10 minutes after the hearing commenced. She said that she had been placed on hold and was unable to access the hearing when it began. When the landlord's representative joined the hearing, I recapitulated the testimony already given by the applicants and allowed the tenants to continue their testimony before giving the landlord's representative an opportunity to respond. Based on the landlord's submissions that the personal respondent is not the landlord and not a proper party to this proceeding, I have amended the style of cause to remove the personal respondent who was named as a landlord together with the corporate landlord.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is an apartment in Vancouver. The tenancy began on July 1, 2012. The monthly rent was \$1,770.00. The tenants paid a security deposit of 850.00 at the commencement of the tenancy.

The tenants testified that there was a flood in the rental unit caused by a back up in the sewer pipes on two different occasions. The flood resulted in several inches of water on the carpets. The tenant said that the problem was not corrected and the landlord's remedial efforts were inadequate. There was a bad odour in the rental unit, in particular, in the tenants' daughter's bedroom. The tenants said that because there was a toxic mould problem in the rental unit they moved out. The tenants have requested payment of the cost for a mould inspection report and payment of their moving costs.

The tenants claimed \$420.00 for the mould inspection and \$599.76 for their moving costs.

The tenants moved out of the rental unit on January 18, 2013. They sent an e-mail to the landlord on November 28, 2012 advising the landlord that they wished to end their tenancy early and would be prepared to give one month's notice. They complained that there had been many unfortunate incidents while they lived in the rental unit, "eg., bedbugs, a flooded bathroom and bedroom, inadequate stove and oven, etc." The tenants then said that it was their intention to move in March or April 2013, but on December 24, 2012 the tenant advised the landlord by telephone that they found a place to rent and expected to move out about the middle of January.

On December 27th the tenants sent an e-mail to the landlord regarding what they said was a bad smell in the bedroom; they said:

Please respond to this email. This is a health issue, and it would not be in your best interests to ignore this.

I spoke to a certified mold specialist this morning, and after I described the situation regarding the flooded bedroom in August, the leak in November and the musty smell in the bedroom, he was 99% certain that this is a black mold issue.

The landlord and the tenants signed a surrender of tenancy agreement dated January 4, 2013. The fixed term tenancy agreement was to end on June 30, 2013, but, pursuant to the Surrender agreement the parties agreed that the tenancy would end on January 18, 2013. The landlord agreed to retain the tenants' \$850.00 security deposit and waive the payment of rent for January. The Surrender Agreement contained the following provision:

5. This Agreement constitutes the entire Agreement between the parties and there are no representations or warranties, express or implied, statutory or otherwise, and no agreements collateral hereto other than as expressly set forth or referred to herein.

The same day that the surrender agreement was signed the tenants had their mold inspector attend at the rental unit to inspect and collect air samples from the bedroom. According to the report provided the levels of certain mold spores were considered elevated with a *Penicillium/Aspergillus* like species. According to the report this mold group was detected at concentrations over 10 times greater than an outdoor baseline sample. The author suggested that the mold could pose a health risk to occupants. He said that: "There is likely a mold source in the unit and further cleaning is required."

The landlord submitted documents concerning the tenancy, including the flooding incidents and the landlord's remedial efforts. The landlord's representative testified that the landlord acted promptly and appropriately to deal with the flooding incidents. On or about August 25th 2012 there was a plugged drain that caused water to cover the bathroom floor and soak part of the bedroom carpet. The landlord had the plugged drain cleared. The tenants paid the initial plumbing bill and were reimbursed by the landlord. The landlord's representative testified that the tenants refused to allow the landlord's remediation company place a carpet blower in the rental unit. The bedroom carpet was removed. The rental unit was cleaned and dried and a new carpet was installed on August 31st. The tenants were given a \$417.50 rent reduction for the month of September.

There was a second leak on November 22nd, 2012. The source of the leak was not immediately apparent. The landlord's plumber investigated and performed some work to reseal the toilet but no leak was discovered. The landlord performed cleanup and replaced the damp carpet.

When the landlord received the tenants' report suggesting that there were elevated mold spore levels in the rental unit, it responded by letter. The landlord said that the bad smell in the bedroom was due to the tenants' refusal to open any window, even in summer months to air the rooms. The landlord noted that the tenants refused to allow a carpet blower to be used immediately follow the flood as the first step to ventilate the unit. The landlord noted that the soaked carpet was replaced. The landlord denied that there was any negligence on its part or any basis for further compensation to the tenants.

After the tenants moved out the landlord had professionals perform further cleaning of the bedroom in the rental unit and this alleviated any mold concerns.

Analysis

On December 24, 2012 the tenants advised the landlord that they intended to move out in mid January. The tenants negotiated an early end of tenancy and signed an agreement on January 4, 2013. They moved out pursuant to that agreement. The Surrender Agreement was an entire agreement; it was intended to end the tenancy and all of the obligations of either party with respect to it. The tenants relied upon the mold report as justification to claim moving expenses and compensation from the landlord for the report itself.

Had there been no agreement to end the tenancy and if the tenancy was ongoing, the tenants may have been in a position to assert that the landlord was in breach of a material term of the tenancy because of a mold problem.

Section 45(3) of the *Residential Tenancy Act* provides:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

But in order to end the tenancy based upon a material breach the tenants would have been obliged to notify the landlord in writing of the breach and give the landlord a reasonable period to correct the breach. In this case the tenants had already made an agreement to end the tenancy before they obtained the mold report. They did not alter their plans based on the report, but instead moved out as scheduled. They did not ask the landlord to perform any cleaning based on the report; instead they demanded payment of moving expenses, reimbursement of four months' of rent and payment for the report.

Conclusion

I find that it has not been shown that there was any negligence or want of care on the part of the landlord that caused the flood or the later leak. I find that the landlord dealt with the problems in an appropriate and timely way. The tenants made an agreement to end the tenancy; they moved out pursuant to that agreement and I find that they are not entitled to be compensated for their moving expenses or for the cost of the report, which was obtained after they made the agreement ending the tenancy; I note that the tenants did not alter their behaviour based on the report and they have not provided evidence of any consequences or damages that resulted from their continued occupancy of the rental unit after January 4th. The tenants' application is dismissed without leave to reapply.

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: June 24, 2013

Residential Tenancy Branch