



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – CNC, MNDC, MNSD, RP, O

For the landlords – OPC, MND, MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied to cancel the Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for a Monetary Order to recover the security deposit; for an Order for repairs to the unit, site or property; and other issues. The landlord applied for an Order of Possession for cause; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witnesses on their evidence. The landlords and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. However, some of the landlords' documentary evidence such as invoices have not provided to the tenants and have not been considered at this hearing. The parties confirmed receipt of evidence.

At the outset of the hearing the parties advised that the tenants are no longer residing in the rental unit, and therefore, the landlords withdraw the application for an Order of

Possession. The tenants withdraw their application to cancel the Notice to End Tenancy and for repairs to the unit, site or property.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to a Monetary Order to recover the security deposit?
- Are the landlords entitled to a Monetary Order for damage to the unit, site or property?
- Are the landlords entitled to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on January 01, 2009 although the tenants moved into the rental unit on December 20, 2008. Rent was \$1,100.00 per month and was due on the first day of each month in advance. The tenant paid a security deposit of \$550.00 on December 15, 2008. The parties attended inspections of the unit at the start and end of the tenancy and the tenants provided a forwarding address in writing to the landlords on September 24, 2013. The tenants vacated the rental unit on September 26, 2013 and returned the keys on September 30, 2013.

The tenants' application

The tenants testify that due to problems with mould in the unit the stress dealing with this and the false allegations by the landlords about the tenants growing marijuana in the unit; the tenants seek compensation from the landlord of \$1,000.00. The tenant TM testifies that the landlords asked the tenant to lie to their insurance company about water damage however the tenant testifies that she was not comfortable doing this and refused. The tenants' testify that the mould was first noticed by the tenants with a few dark spots in 2010. The tenants dealt with this by washing the areas with bleach

however the mould kept coming back. In 2012 the tenants testify that they notified the landlord of these problems and the landlord sent a contractor to the unit on August 26, 2013. The landlords accused the tenants of growing marijuana in the unit or having open windows which caused the mould.

The tenant testifies that the restoration company came into the unit and cut away drywall. Part of this was sent to be tested for asbestos. The tenant testifies that once the drywall was removed the restoration men did a water test on the outside of the house to see where the mould was coming from. The tenant testifies that they observed water coming through the many cracks and holes in the siding. This was later filled with foam.

One of the restoration men came back on September 17, 2013 and informed the tenants that there was asbestos in the house and he was very surprised that no one had put a barrier up on the walls to protect the tenants as this room was the male tenant's bedroom. The restoration man was also surprised that the male tenant had been allowed to stay in the bedroom and that no one had informed the tenants about the asbestos. The male tenant immediately moved his belongings out of the bedroom to other areas of the house and had to sleep in the living room. The tenants lost use of this bedroom from September 17 to September 26, 2013 due to this and it caused stress and disruption to the rest of their life's. The tenants also seek to recover the rent paid for September of \$1,100.00 due to the loss of this room.

The tenants seek to recover the costs incurred to move from the rental unit including costs for boxes and tape, a moving van, the movers and time taken off work. The tenants seek to recover \$500.00 for moving. The tenants testify that they were advised to move from the rental unit due to the mould issues and the risk to their health. The tenants agree that the landlords had served the tenants a One Month Notice to End Tenancy on September 04, 2013 and agree that they provided written Notice to the landlords on September 04, 2013 and again on September 24, 2013. The tenants have not provided any invoices or receipts to indicate what costs were incurred to move.

The tenants testify that in 2012 they had problems with the furnace and had to keep relighting it. They notified the landlord and a gas technician was sent to look at the furnace. It was determined that the furnace was pumping out carbon monoxide and was then disconnected. The tenant testifies that the disconnection notice states that a defect heat exchanger and furnace flow was found and the furnace has hazardous conditions. The tenants agree that the landlords replaced the furnace. The tenant TM testifies that they went to the doctors and were tested for carbon monoxide poisoning. They were found to have high levels of poisoning which had given them symptoms such as headaches, nausea and cramping.

The tenants' testify that due to the health risks with the carbon monoxide and the mould spores the tenants seek to recover \$10,000.00 from the landlords for exposing the tenants to these health risks. The tenant TM testifies that her daughter has a heart mummer and it was especially dangerous for her health to be exposed to these things. The tenant testifies that when she took her daughter to the doctor the doctor said that the house was not a safe environment for the tenant's daughter.

The tenants seek to recover \$100.00 for photocopying, gas, registered mail and the filing fee. The tenants seek an additional \$150.00 for the costs for stopping their postdated rent cheques. However at the hearing the tenants agree the landlords have now returned their postdated rent cheques.

The landlords ask the tenants why if they discovered mould in 2010 why did they not report it to the landlords until 2013. The tenant responds that they did not know it was mould at that time and they dealt with it by cleaning it. The landlords ask the tenant TM about the symptoms the tenant described with mould and carbon monoxide exposure. The landlord asks the tenant if the tenant told the landlord that she had cramps from a bowel condition that the tenant treated by taking marijuana. The tenant TM responds that she does have irritable bowel syndrome and does smoke marijuana to control that but never in the house or around her children. The landlords ask the tenants when they

first felt unsafe in the house. The tenant responds in 2012 when they should have notified the landlords about mould to prevent long term risk.

The landlords ask the tenant why they only told the landlords in 2013 and why then did they not move out if they were concerned about health risks. The tenant responds that they did not know it was mould. The landlords ask the tenant why after notice was given about the marijuana plants in August 2013 did the tenant insist on wanting to stay in the house for another two years if it was so unhealthy. The tenant responds that they wanted to stay as the children are in school and their family live close by. Also because the landlords said they would do the repairs. Then the landlord said they would only repair the male tenant's bedroom and so after that they gave their notice to end tenancy.

The landlords dispute the tenants' testimony. The landlords testify that the tenants were given notice to end the tenancy because it was found that the tenants were growing marijuana in the garden. At least five plants were found as big as 10 feet tall. The landlords suspected that the tenants may have grown the seeds for these plants in the house and that the grow up resulted in the mould issues. The landlords agree that they have never seen any plants in the house but after their contractor could find no valid reason for the mould to grow it was suspected that a grow up was the cause. The landlords testify that they had the roof repaired but there was no evidence of moisture leaking in this area.

The landlords testify that they did not receive any information from the restoration company about a water test done on the siding or leaks resulting from that. The landlords testify that the restoration company did not notify the landlords that asbestos was found in the drywall but when they got the detailed invoice it did show that testing was done for asbestos. The restoration company did verbally inform the landlords that water was properly leaking from the siding in June, July, August and September however the landlords testify that as they had not had rain during these months it was

unlikely to be the cause of the mould. The landlord testifies that the carpet in the bedroom was damp and the landlords were again concerned because it had not rained.

The tenants ask the landlords why they did not contact the tenants when asbestos was found. The landlord responds that they did not know and the tenant TM knew about it before the landlords did. The tenants ask why a barrier was not put up. The landlord responds that they do not know as the tenants were the ones in contact with the restoration company.

The tenants call their witness YP. The witness is the mother of the female tenant. The witness testifies that the tenant never smoked in the house and the witness was present when the restoration company came and cut out the drywall with mould. They then put foam into the cracks to prevent more water coming in. The witness testifies that the tenants kept a good clean home and the house was too small for the tenant to have grown any marijuana plants. The witness testifies that she was present when the landlord and tenant spoke about mould. The landlord said they would only repair the male tenant's room and would only do the female tenant's room if the mould got worse. The landlord asks about the problems. The witness responds that the mould was bad and the landlords' contractor was supposed to come and cover the walls again. The landlord asks if the witness knew about the marijuana growing outside. The witness responds that she did know but was not happy about it. The landlord asks what health problems the tenants experienced. The witness responds that they complained about headaches and they had blood tests done after problems with the furnace.

The tenants call their second witness DP. This witness is married to the tenant's mother. The witness testifies that he saw mould in the house. The tenant kept a clean house and tried to wash the mould out. The witness testifies that there is no smoking in the house and the only marijuana plants were outside as there is nowhere to grow it inside.

The landlords' application

The landlords testify that the roof had to be changed however it did not have any leaks but due to mould on the ceiling of the rooms they thought the roof was to blame. The landlord agrees that they did not investigate this as a possible cause before changing the roof. The landlords testify that since they now suspect the tenants had a grow up in the house that created the mould the landlords seek to recover the cost for changing the roof from the tenants of \$4,969.00. An invoice for this work was provided in evidence to this office but not to the tenants.

The landlords testify that for the same reasons the landlords seek to recover the costs incurred for the repair to the mould areas. The landlords have provided the detailed report and invoice from the restoration company for \$2,296.33. However this invoice was not provided to the tenants.

The landlords testify that they now have to change out the carpets, paint the walls that were repaired and change the locks. The landlords also seek to recover these costs from the tenants. The landlords agree that this work has not yet been done and no evidence has been provided to support this claim.

The landlords call their witness MJ. This witness is a contractor who did work for the landlords. The witness testifies that when he was on site doing an inspection for the landlord about mould, they went through the yard to see if there was any water ingress. As they stood in the backyard they could smell marijuana and saw at least five or six marijuana plants eight to ten feet tall. The witness testifies that there could have been other smaller plants.

The landlord asks this witness what he can say about the mould. The witness replies that from his experience the mould was questionable. The witness testifies that he did not see any marijuana plants in the house but the mould indicates that it is likely there were some grown there. The plants outside were so tall that they may have been started as seedlings in the house.

The landlord asks the witness that if the mould came from an external water leak would there be an indication of this on the other side of the drywall. The witness replies that if the water came from outside then you would see staining on the other side of the drywall. However all the staining was on the inside and was surface mould. The landlord asks the witness if the witness was present when the men from the restoration company did the water test. The witness responds that yes he was present. There was no water coming from the roof but some leakage from the siding which was then filled. There was also mould on the ceiling which was removed but no explanation why the mould would grow there as there was no moisture present from the roof.

The tenants cross examine the witness and ask if the mould could be from a previous grow up. The witness asks how previous. The tenant responds and says previous to their tenancy of five years. The witness replies that he doubts it. The tenants ask if the witness and man from the restoration company said that mould goes into hibernation. The witness replies yes that's correct. The tenant asks if the witness ever saw marijuana in the house. The witness replies no never.

The tenants dispute the landlord's claims for damages. The tenants testify that the roof repair is the landlords' responsibility and not the tenants. The tenants testify that the carpets were cleaned at the start of the tenancy and throughout the tenancy by the tenants. On the day the restoration company came to remove the drywall the male tenant had spilt a small glass of water on the carpet the night before and this would not warrant having the carpets replaced. The tenants testify that they cleaned the house before they moved out and caused no damage to the house and the keys were returned to the landlords. The tenants dispute that they are responsible for causing the mould. They dispute that they grew marijuana in the house, but agree it was grown outside.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. In dealing with the tenants' application first I have applied a

test used for damage or loss claims to determine if the claimants have met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

The tenants seek to recover rent paid for September as they lost the use of the male tenant's room and it caused inconvenience for his belongings to be located in the rest of the house. The tenants agree that the male tenant moved out of his room while the restoration company did their work to remedy the mould issues. The male tenant moved out of his room on September 17 and the tenants moved from the unit on September 26. I find therefore that the tenants did lose part of the rental unit for a period of nine days while the restoration work went on. I find the tenants would be entitled to some compensation for this loss and for the inconvenience. However, as this was only for a period of nine days and the tenants are seeking the entire month's rent then I have limited the tenant's claim by dividing the rent into a daily basis of \$36.66 and calculating this for nine days. The tenants are therefore entitled to recover compensation of **\$329.00.**

With regard to the tenants' claim for compensation for moving expensive; I find the tenants had given notice to the landlord on the same day the landlords gave notice to End the Tenancy. The tenants' first Notice was effective on October 31, 2013. The tenants then gave another notice to on September 24 effective on September 30. I therefore find the tenants chose to vacate the rental unit. I also find the landlords acted expediently to remedy the mould issue once the tenants had informed the landlord that it was becoming a real issue then I cannot determine that the tenants choose to move because of the actions or neglect of the landlords. The landlords were not made aware of the siding leaks and asbestos issues by either the tenants or the restoration company prior to this. Furthermore if it had been so unhealthy to live in the unit a find the tenants account to be questionable as the tenants asked the landlords if they could stay for another two years despite the mould issues. Furthermore the tenants have provided no invoices or receipts for any of the claimed costs to show the actual costs incurred to move. Consequently, the tenants have failed to meet the burden of proof and their claim for moving costs is therefore dismissed.

With regard to the tenants' claim for a loss of quite enjoyment due to stress and the alleged false accusations from the landlords; a landlord is entitled to ask the tenants if the tenants have grown marijuana inside the home when there is strong evidence that marijuana plants are growing in the garden. If tenants seek to grow plants that are considered to be an illegal substance then the tenants must expect that the landlords will have some suspicions about how the seedlings were grown. As far as stress related issues; the tenants agree that they first noticed marks which they cleaned with bleach in 2010. The tenants also agree that they did not notify the landlords until late 2012 or 2013, that these marks may be mould. The tenants share the a responsibility to notify landlords of anything that could likely be mould so the landlord can take remedial action to remedy this minor issue before it becomes a mayor concern. It the tenants then experienced stress because of this then the tenants must hold themselves equally responsible. As far as the landlord asking the tenant to lie to the insurance company; if this conversation did take place and the tenant rightfully refused to lie about water leaks then there is no evidence from the tenants that this matter escalated into a situation

which would result in a level of stress which would warrant a monetary award of \$1,000.00. The tenants have not met the burden of proof in this matter and this section of their claim is dismissed.

With regard to the tenants' claim for \$10,000.00 for compensation for health risks; in this matter the tenants would have to meet the burden of proof that their health was put at risk. I have no evidence from the tenants that they experienced carbon monoxide poisoning or that they suffered any other health issues due to the presence of mould or asbestos. The tenants have provided no information from a health practitioner to support their claim. I also find that concerning the mould issues as the tenants did not mitigate the risks by informing the landlords in a timely manner about the mould then without further corroborating evidence I find the landlords did act quickly to remedy this issue as soon as they were informed. This section of the tenants' claim is therefore dismissed.

With regard to the tenants' claim for \$150.00 for costs to cancel cheques; as these cheques have now been returned to the tenants then this section of their claim is dismissed.

With regard to the tenants' claim for \$100.00 for photocopying, gas, filing fees and registered mail. The tenants' filing fee was waived by the Residential Tenancy Office and there is no provision under the *Act* for any other costs connected to filing an application to be awarded. This section of the tenants' claim is dismissed.

With regard to the landlords' application; the landlords have applied to recover the costs incurred to replace the roof. The same test for damages has been applied to the landlords' claim. The landlords have provided no evidence to show that the roof had to be replaced because of the tenants' actions or neglect. A landlord should take reasonable care to investigate any issues with their roof before going to the expense of having it replaced if this was not required. A landlord cannot expect to pass this cost onto the tenants without proof that the roof was replaced because of the tenants'

actions or neglect. Consequently the landlords claim for roof repairs of \$4,969.00 is dismissed.

With regard to the landlords' claim to recover costs incurred to remedy the mould issues. The landlords seek to recover \$2,296.33. However the landlords must show that the mould was caused by the tenants and the landlords have no corroborating evidence to support this. The landlords' evidence is based on supposition and suspicion. Without any evidence the burden of proof is not met especially when the tenants dispute the landlords claim. This section of the landlords claim is dismissed.

With regard to the landlords' claim for carpets, painting and to change the locks; the landlords have not specified an amount claimed for these items. The landlords have not shown that the tenants have left the carpets in a condition that requires the carpets to be changed or that the tenants are responsible for damage to the walls which result in the walls requiring painting. The parties agree at the hearing that the tenants did return the keys to the unit so the tenants cannot be held responsible for changing the locks. Without any corroborating evidence to support their claim or to meet the burden of proof this section of the landlords claim is dismissed.

With regard to each parties claim against the security deposit; as I have dismissed the landlords claim for damages I find the landlords are not entitled to retain the security deposit and any accrued interest. The security deposit of **\$550.00** and accrued interest of **\$0.38** must therefore be returned to the tenants.

As the landlords have been unsuccessful with their claim the landlords must bear the cost for filing their own application.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$879.38**. The order must be

served on the landlords and is enforceable through the Provincial Court as an order of that Court.

The reminder of the tenants' application is dismissed in its entirety without leave to reapply.

The landlords' application is dismissed in its entirety 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: October 22, 2013

Residential Tenancy Branch

