



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for compensation for cleaning, utilities and repairs to the rental unit, to recover the filing fee for this proceeding and to keep the tenants' security deposit in partial payment of those amounts. The tenants also claimed for recovery of their security deposit and compensation for the landlord's material breach of the tenancy. Both the landlord and tenants attended the teleconference hearing.

Preliminary Issues

At the outset the landlord requested an adjournment to amend her claim to add a number of claims including \$ 700.00 for the cost of heating oil loss of revenue. She either had not considered them or was not prepared to attend the hearing. The tenants consented to the addition of the \$700.00 claim but objected to the amendment of anything else such as loss of revenue. I permitted that amendment only and denied the landlord's application for an adjournment as any necessity was brought about by her own neglect or unpreparedness. The amount claimed is amended by added the amount of \$ 700.00.

Issues(s) to be Decided

Is the Landlord entitled to compensation for cleaning and repairs and if so, how much? Were the tenants entitled to end the tenancy and for recovery of any compensation?

Background and Evidence

Service of the applications was admitted by the parties. Based upon the evidence of the landlord I find that this fixed term tenancy started on June 15, 2013 and ended prior to the expiry date of April 15, 2014 on December 1, 2013 when the tenants moved out. Rent was \$ 1,600.00 per month payable in advance on the 1st day of each month. The tenants paid a security and pet deposit of \$ 900.00 at the beginning of the tenancy.

The landlord testified that the tenants were responsible for heating the unit including the filling of and paying for the heating oil. There was a fireplace in the basement but the landlord testified that she explained to the tenants at the beginning of the tenancy that it was inadequate to heat the entire unit. On or about October 15, 2013 the landlord testified that the tenant DA attended her workplace and advised of a mould problem in the house and that it was affecting her son who has an auto immune disorder's health. The landlord testified this was the first time she heard of these issues. The landlord inspected the unit on October 16, 2013 with the tenants' parents present. She determined that mould growth was as a result of inadequate heating and poor ventilation. She advised the parents to fill the oil tank as the fireplace alone was an inadequate source to heat the whole house. The landlord attempted to retain a home inspection service and sent mould samples to a lab for analysis.

The landlord testified that the oil tank was filled on or about October 23, 2013. The tenants discovered a leak on the exterior of the tank and the landlord's repair person could not fix it. It was replaced on October 31, 2013. The furnace was working according to the landlord after that repair. The tenants discovered a water leak from the furnace and the landlord repaired it by November 2, 2013. The landlord testified that the furnace was working again after that repair. The landlord discovered that the oil had been pumped out of the tank around October 25, 2013 and requested that it be refilled. The landlord received a letter from the tenants on November 2, 2013 advising that they were ending the tenancy pursuant to section 45(3) that the inadequate heat and mould issues were health hazards and therefore material breaches. The landlord's subsequent home inspection report indicated that all mould found was to be expected and likely from poor ventilation and inadequate heat rather than envelope leakage. The mould lab report indicated that the mould was a class "C" mould which was ordinary household mould and not hazardous.

The landlord is claiming:

Heating Oil (October 23 to December 1 st)	\$ 700.00
Nelson Hydro	\$ 18.93
Carpet cleaning	\$ 212.50
Window screen replacement	\$ 40.32
Window Blind	\$ 16.77
Supplies	\$ 108.98
House cleaning and repairs	\$ 400.00
Pet damage repair	<u>\$ 100.00</u>

Total \$ 1,597.50

The tenants testified that they asked if there was mould at the move in inspection. They claim that the landlord knew of mould as supported by an unsigned email from an alleged previous tenant. They also claim the landlord permitted a grow op by a previous tenant. The tenants testified that they were told they could heat the whole house by the fireplace but that was malfunctioning. They testified the landlord refused to repair it. They testified the first time they heard they needed to heat the house using the oil furnace was in mid-October. They testified that their child who suffers from an autoimmune disease, became ill from the mould. They met with the landlord on October 15th to tell her of this issue. They admit this was the first time they notified the landlord of the problem. They testified that when their parents met with the landlord on October 16 it was the first time they were told about the oil heat. They ordered 500 litres oil. It was delivered but then required to be pumped out after the leak was discovered. A new tank was installed and refilled at the landlord's request. However it was double the amount requested by the tenants so they requested it to be half drained again. The oil company was unable to do so as they claim it was contaminated by the used "new" tank. The tenants testified that the boiler ruptured in the basement which the landlord repaired by about November 2nd. On November 2, 2013, they delivered their notice to end the tenancy alleging that the landlord had materially breached the tenancy pursuant to section 45(3) of the Act because of the mould and inadequate heat. They are claiming for the return of their security deposit and all of their rent paid throughout the tenancy. The tenants dispute the oil cost alleging it was double what they had ordered and the cost of cleaning as they say some of that cost was incurred to clean the basement floor caused by the boiler rupture.

The landlord replied by testifying that the fireplace was operational but for a small tear in the door gasket which she repaired when the tenants were not using it. The landlord testified that the mould in the bathroom was non existent until the tenants began using the house and not ventilating or heating. She was adamant that no cannabis was ever grown in the unit.

Analysis

The tenants submit that they have ended the tenancy because of a breach of a material term. They submit that the unit was unfit because of heat and mould which is a breach of the implied term of section 32(1)

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(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.

Section 8 of Residential Tenancy Policy Guideline states:

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a

result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

The tenants have the burden of proof to establish the claim on the evidence presented at the hearing. In this hearing the tenants had not submitted any medical evidence that their child suffered from an immune disorder, that he was affected by mould or that this mould was the scientific and medical cause of the child's condition. Furthermore they had not submitted any scientific or expert evidence that this mould was indeed dangerous to any human beings. Additionally and alternatively even if the mould was harmful the tenants did not give the landlord adequate or reasonable notice of the problem with sufficient time to repair the problem. I find that the tenants first notified the landlord of the problem on October 15, 2013. The landlord acted promptly and began investigating and remediating the issue immediately. Two weeks later the tenants gave their notice. I also find that it defies common sense that the tenants thought they could heat an entire house through winter in Nelson using only a basement fireplace when they knew or ought to have known that an oil furnace was also required. I accept the landlord's submission supported by her home inspection report, that the mould was likely caused by inadequate ventilation and heat, all of which the tenants had within their exclusive control. I also find that the heating problems were rectified almost immediately by the landlord and that the tenants were either deprived of heat for a very short time or by their own volition because they chose to heat exclusively using the fireplace. Accordingly I reject the tenants' claim that the landlord had breached a material term entitling them to end the tenancy. Their claims are dismissed.

I find that the tenants breached the fixed term tenancy by ending it prior to the end of the term pursuant to section 45(2) of the Act. The tenants had not challenged any of the landlord's claims other than that of the cleaning and fuel oil amounts. I find that the landlord has proven all of her claims for damages save and except for the cleaning and oil charges. Regarding the cleaning I accept the tenants' explanation that part of the cleaning was of the basement floor caused by the boiler rupture. Accordingly I reduce that claim by \$ 200.00. I further accept the tenants' explanation that the landlord ordered double the amount of oil required or requested by the tenants and accordingly I reduce that claim by \$ 350.00. Accordingly I allow the landlords claim totalling \$ 1,047.50. As the landlord has been successful in this matter, I find pursuant to s. 72 of the Act that she is also entitled to recover the \$50.00 filing fee for this proceeding. I order the landlord pursuant to s. 38(4) of the Act to retain the tenants' security and deposit inclusive of interest amounting to \$ 900.00 in partial payment of the rent arrears. The landlord will receive a Monetary Order for the balance owing.

Conclusion

In summary I ordered that the tenants pay to the applicant the sum of \$ 1,047.50 in respect of this claim plus the sum of \$ 50.00 in respect of the filing fee for a total of \$ 1,097.50. I order that the landlord retain the security deposit amounting to \$ 900.00 inclusive of interest. I grant the landlord a Monetary Order in the amount of **\$ 197.50**

and a copy of it must be served on the tenants. If the amount is not paid by the tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court. I have dismissed all of the tenants' claims.

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: March 18, 2014

Residential Tenancy Branch

