



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order. The tenants appeared at the hearing and the landlords were represented by a family member.

At the hearing, the parties agreed that the surname of one of the landlords was misspelled on both the tenancy agreement and the application for dispute resolution. The parties agreed that the spelling should be changed on the application. The style of cause reflects this change.

Issue to be Decided

Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The facts are not in dispute. At the beginning of November 2013, the parties entered into a written tenancy agreement which provided that the tenancy would begin on December 1, 2014 at a rental rate of \$1,690.00 per month. On November 23, the landlord's agent telephoned the tenants to advise that mold had been found in the rental unit and on November 25, the agent sent an email advising that the house was uninhabitable and that the contract was void. The parties agreed that the only money which exchanged hands was a security deposit which was returned in full to the tenants.

The landlord's representative at the hearing testified that the landlord received an air sample report about the mold on November 21 and prior to receiving the report, had no indication that there were any problems with the rental unit. The former tenant had initiated the mold testing. The report stated that the unit had visible moisture damage and mold growth and concluded that "The concentrations of molds detected are significant and are not considered safe for occupancy." The landlord argued that the tenancy was frustrated.

The tenants testified that they had previously lived just a few doors away from the rental unit and had not expected to have to hire a truck to move. When they learned that the rental unit would not be available, they hired a truck to move their belongings to a storage unit. The tenants seek to recover the \$85.48 cost of the truck rental and the \$224.95 paid for one month's storage.

The tenants testified that they did not pay rent elsewhere in December, but stayed with friends and family for that month. They seek the equivalent of one month's rent in compensation for having to move because the landlord was completing repairs as well as an additional \$1,329.57 to compensate them for the inconvenience of the situation and penalize the landlords for not following the proper procedure under the Act to end the tenancy. They also seek to recover the \$50.00 filing fee paid to bring their application.

Analysis

I accept that the air sample report, which was submitted into evidence, was performed by an expert who was qualified to make the determination that the rental unit should not be occupied.

In order to find that the tenancy was frustrated, I must be satisfied that the unit could not be occupied due to an unforeseen event. I do not accept that the mold growth was unforeseen. The report indicates that mold growth was visible, attributes the growth to condensation and the landlord was in the unique position to know whether the ventilation system in the bathroom was adequate. I find that the tenancy was not frustrated.

While the Residential Tenancy Act (the "Act") contemplates frustration, it does not give landlords an instant means to end a tenancy in circumstances such as these. The only course of action that the landlord could have taken under the provisions of the Act would have been to obtain an order from a government authority demanding that the rental unit be vacated and to serve a one month notice to end tenancy to the tenants on that basis. Following this course of action would have resulted in the tenants having to secure other accommodation and would have exposed them to toxic mold for the period in which they occupied the unit. In my view, although they did not end the tenancy pursuant to the means prescribed by the Act, the landlords followed the best course of action in the circumstances and by doing so, limited the harm to which the tenants were exposed.

Nevertheless, the landlords had an obligation under section 32 of the Act to maintain the premises in a manner that complies with health and safety standards required by law. I find that the landlords failed to meet this obligation. Section 7 provides that if a landlord does not comply with the Act, s/he must compensate the tenants for damage or loss that results.

I find that the tenants had to pay for a moving truck and storage for their belongings as a direct result of the tenancy having been abruptly ended and I find that the landlords are liable for those costs. I award the tenants \$310.43.

The tenants suggested that they should be entitled to one month's compensation pursuant to the provisions of sections 49(6)(b) and 51 of the Act. I find that these sections are not applicable in these circumstances as it was not the manner in which the landlords were renovating or repairing the unit that required vacancy, but rather the toxicity of the mold therein.

As outlined above, section 7 holds the landlords liable for losses suffered as a result of a breach of the Act. The tenants did not pay rent in the month of December and so suffered no financial

loss, but I accept that they suffered a loss of quiet enjoyment that they should have expected from their tenancy. I find that an award of \$500.00 will adequately compensate the tenants for this loss. I have arrived at this figure taking into account the fact that because the tenants did not pay rent in December, they were in a better financial position as a result of the loss, albeit a less stable and more anxiety ridden state, than they would have been had the landlords not breached the agreement.

The tenants have been awarded a total of \$810.43. The landlords submitted into evidence an emailed settlement offer made on November 26 which was not marked without prejudice. In that email, the landlords offered the tenants \$1,000.00. Because the amount of the tenants' award is less than what the landlords were offering to settle this matter, I find that the tenants should bear the cost of their filing fee.

Conclusion

The tenants are awarded \$810.43 which represents compensation for the cost of renting a truck and storage facility and loss of quiet enjoyment. I grant the tenants a monetary order under section 67 for this sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. The balance of their claim is dismissed.

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 26, 2014

Residential Tenancy Branch

