



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MND, MNSD, MNDC , FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary claim for loss of rent for one month, costs of cleaning and repairs and reimbursement of the filing fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

Is the landlord entitled to monetary compensation for loss of rent and damages?

Background and Evidence

The landlord testified the tenancy began in April 2013 with rent of \$750.00 per month. A security deposit totaling \$375.00 was paid and has not been refunded. The tenancy ended on December 31, 2013 pursuant to the tenant's one month written Notice.

The landlord testified that the tenant only reported mould in the unit when they gave written Notice to move. The landlord testified that an inspection done on December 5, 2013 revealed that the unit was contaminated with mould. The landlord stated that they were unable to inspect the unit prior to that point due to the tenant's refusing access. According to the landlord, the tenant caused the mould by inadequately heating the unit. The landlord acknowledged that they didn't consult a mould expert to confirm this conclusion. The landlord stated that the tenant was obliged to report the mould earlier.

The landlord testified that, when the tenant vacated, cleaning and repainting was necessary, for which the landlord claims \$380.00 for labour and \$56.50 for supplies.

The landlord acknowledged that the move-in and move-out condition inspection reports were not done jointly with the tenant due to the tenant's refusal to cooperate. The landlord pointed out that repeated attempts were made to arrange the condition inspections through verbal conversations with the tenant, but the tenant ignored the landlord's efforts.

The landlord stated that they did not try to show or re-rent the unit because of the condition and the tenant's refusal to cooperate. The landlord is therefore claiming \$750.00 for loss of rent for the month of January 2014.

The tenant confirmed that there was mould but stated that the unit was adequately heated by the tenant. The tenant disagreed with all of the landlord's claims.

Analysis:

With respect to an applicant's right to claim damages from another party, Section 7 of the Act states that, if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results and section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

I find that section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit. While a tenant of a rental unit must repair damage to the rental unit or common areas that is *caused by the actions or neglect of the tenant*, a tenant is not required to make repairs for reasonable wear and tear.

I find that both parties agree that mould was present. However, I find that the burden of proof is on the landlord to prove the tenant caused the mould in violation of the Act. I find that this would require the landlord to submit evidence in the form of a report or official opinion from a qualified mould expert.

I do, however, accept that the tenant had an obligation to report the mould as soon as it appeared. That being said, I find that the landlord neglected to inspect the unit on a regular basis under a mistaken belief that they needed the tenant's consent to do so.

Section 29 of the Act states that a landlord may enter a rental unit by giving the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

or an emergency exists and the entry is necessary to protect life or property.

Section 29 (2) also states that a landlord may inspect a rental unit monthly in accordance with the Act.

Given that no report about the source or cause of the mould was submitted, I find the landlord has not presented sufficient proof to meet element 2 of the test for damages by establishing the tenant was responsible for causing the mould in violation of the Act.

I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave it reasonably clean, and undamaged except for reasonable wear and tear. The landlord has alleged that the tenant violated this section of the Act by leaving the unit in an unacceptable condition. I find that this is disputed by the tenant.

I further find that the landlord cannot rely on the contents of the move-in and move out condition inspection reports to support the landlord's position, as these were not completed in accordance with the Act. The tenant was not offered 2 opportunities to participate, nor was the tenant served with a Final Opportunity for the Inspection on the approved form as required under the Residential Tenancy Regulations.

In any case, in regard to the landlord's claim for cleaning and repainting, I find that any of these costs that are related to mould infusion must be dismissed. This also applies to

the claimed loss of rent for January due to the delay in re-renting, which the landlord feels was attributable the remediation process to address the mould.

In addition to the landlord's failure to prove element 2 of the test for damages, I find that the landlord also failed to sufficiently meet element 4 by showing that reasonable steps were taken to mitigate the loss of revenue for January 2014.

Based on the testimony and evidence presented during these proceedings, I find that the landlord has not succeeded in meeting the burden of proof that they are entitled to compensation for the loss of rent or damages for cleaning and repairs.

Accordingly, I hereby dismiss the landlord's application without leave to reapply.

Given the above, I hereby grant the tenant a monetary order for the return of the tenant's security deposit in the amount of \$375.00. This order must be served on the landlord and may be enforced through BC Small Claims Court if not paid.

Conclusion

The landlord is not successful in the application and it is dismissed without leave. The tenant is granted a monetary order for the return of the security deposit.

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 30, 2014

Residential Tenancy Branch

