Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, MNR, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for unpaid rent, compensation for damage or loss under the Act, to retain the security deposit and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting compensation for damage or loss under the Act, return of the security deposit and to recover the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions during the hearing. I have considered all of the included evidence and testimony provided.

Preliminary Matters

At the start of the hearing a parent company representative for the landlord identified herself. There was no dispute that the tenants, rather than naming the landlord, as indicated on the tenancy agreement, named the parent company, who owns the building. The agent for the parent company said that they did receive the application that was sent via registered mail on March 13, 2014.

The landlord said that they had not had sufficient time to amend their application to include a claim for the loss of April 2014 rent. It was explained that consideration of an amendment for additional rent can be considered at a hearing. However, I determined

that the landlord had sufficient time prior to the hearing to amend the application and serve the application to the tenants, but failed to do so.

The landlord stated that their agent, T.P. was able to represent the landlord at the hearing. The parent company representative then exited the hearing.

The parties confirmed receipt of each other's written submissions that were given to the RTB.

The tenants submitted digital evidence to the Residential Tenancy Branch (RTB) on March 14, 2014. The tenants said they were told the RTB would transfer the evidence to the other party. The RTB does not disseminate evidence on behalf of applicants. Therefore, in the absence of proof of service of the digital evidence to the landlord, as required by RTB Rules of Procedure, the tenant's digital evidence was set aside. The tenants were at liberty to provide oral testimony.

The tenants submitted several photographs, as part of email evidence. Those photographs were black and white photocopies and illegible.

The landlord supplied a series of photographs as evidence that were photocopies of originals. The copies were illegible.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid March 2014 rent in the sum of $830.00?

Is the landlord entitled to compensation for cleaning costs in the sum of $200.00?

May the landlord retain the security deposit or are the tenants entitled to return of the deposit?

Are the tenants entitled to compensation for loss related to the presence of mold in the unit in the sum of $1,500.00?

Are the tenants entitled to moving costs in the sum of $55.00?

Background and Evidence

The tenancy commenced in April 2012; rent is $830.00 due by the 1st day of each month. A security deposit in the sum of $415.00 was paid.

A move in condition inspection report was completed and a copy given to the tenants.

The tenants said that approximately 9 days before they vacated, they told the landlord's spouse, who works in the building that they were vacating. There was no dispute that on March 4, 2014 the tenants had vacated and that the keys were given to the landlord.

The landlord said she did not know the tenants were vacating and on March 2, 2014 a 10 day Notice to end tenancy for unpaid rent and a notice of entry for March 6, 2014 were posted to the door. The landlord said she would not have done this if she had known the tenants were vacating. It was not until the landlord saw a moving van that she became aware the tenants might be moving.

The tenants confirmed that written notice ending the tenancy was not given to the landlord.

The landlord has claimed the loss of March 2014 rent, as the tenants vacated without notice.

The tenants said they gave 9 days prior notice that they would vacate and did so due to health concerns. The tenants said they spoke to someone with the RTB who told them they did not need to give notice.

The landlord and tenants agreed that they met on March 4, 2014 to complete the move-out inspection report. The tenants said that when they met with the landlord to complete the report the landlord said everything was great. The tenants refused to sign the inspection report as the landlord wanted the tenants to sign, agreeing to abandon any claims against the landlord.

The landlord agreed that at the time of the move-out inspection she did tell the tenants everything was great as she just wanted them to move out.

A copy of the inspection reports were not supplied as evidence and the tenants were not given a copy of the final report.

The landlord said that the tenants did not clean the unit. A list of dates and hours the landlord cleaned the unit was supplied as evidence. The landlord cleaned the kitchen, appliances, walls, the bathroom, widows, windowsills and all floors. The window sills had mold growing on them and the unit looked as if it had not been cleaned in the 2 years the tenants had lived there.

The tenants said the unit was perfectly clean when they vacated and that due to mold they had been forced to clean the windows every 5 or 7 days.

The tenants have claimed the sum of $500.00 for each tenant and 1 child who lived in the rental unit; totalling $1,500.00. The application indicated that this sum was "for each member in our family that was affected medically."

The tenants made a report to the landlord in relation to mold and said that when the agent's spouse came into the unit on February 8, 2014, he agreed that there was mold in the suite. He has said if it was bad he might have to rip the walls out. The landlord said this was not correct.

The tenants supplied a series of emails sent between the tenants, the property owner head office and the agent for the landlord. Some of the email communication included:

- February 15, 2014 to the landlord head office, complaining about "black mold" eating the upstairs ceiling and all of the upper level drywall, with the tenants having agreed to transfer to a different suite that had been offered, but now only if the landlord would also provide 3 month's rent abatement; and

- February 17, 2014 response from the landlord indicating they would not transfer the tenants if they were requesting 3 month's rent abatement; that the landlord had only recently been notified of problems.

Further emails went back and forth between the parties. On February 17, 2014 the landlord said that a transfer to another suite was the limit of compensation and that offer would now require written agreement from the tenant's that they would not seek a rent reduction or other sum from the landlord.

The tenants replied indicating they would move into the new suite and pay rent, but would file an application for dispute resolution as the result of health issues related to mold. The tenants asked how they could be further compensated. The landlord refused and reiterated their offer of unit 303 as an alternative, with agreement that no claims would be made.

The tenants replied stating they believed the landlord was telling them they did not deserve compensation. The landlord said they were not evicting the tenants, but allowing them to transfer to another unit, with their current deposit and without incurring carpet cleaning costs. After several responses from the tenants, the landlord withdrew the offer of a move; they referred to the tenant's emails as constant harassment.

On February 18, 2014 the landlord emailed the tenant explaining they had been in the unit on that date and did not see any mold. The landlord again offered to allow the tenants to move into unit 303, but the tenant's would be required to release the landlord from liability. The landlord paid the current tenants of unit 303 to move out early so that the unit could be ready for the tenants. The tenants said they spoke to the people who lived in unit 303 and they were told that unit also had mold.

The final email from the landlord was sent on February 19 2014, asking for evidence such as doctor's notes and professional reports in relation to the suite. The tenants chose not to send any documents.

Just prior to vacating the tenants removed a light fixture and put a camera scope into the wall. They could see moldy insulation and rotten studs. No evidence of this was supplied.

The tenants said that throughout the tenancy they experienced health problems that they discovered, in January 2014, were the result of mold in the walls and insulation of the building. The tenant's have a friend who is a roofer and he examined the roof and said the roof was leaking into the ceiling.

The monetary claim is meant to compensate the tenants for the months of nosebleeds and coughs. The tenants did not know what was causing theses problems. When they saw their family doctor in January it had been suggested they investigate the possibility of mold in the home. The tenants submitted a March 5, 2014 note from their family physician who indicated that he had seen the male tenant. The physician confirmed that since vacating the home the family were "much better (respiratory, rashes) since they moved out of their building where they found mold in the roof."

The tenants confirmed that they did not obtain any independent, professional report on the condition of the rental unit.

The landlord said that she had been in the unit on February 8, 2014 and did see what she thought was mold on small pieces of the wall. The landlord said there was no other evidence of a mold problem and that the small amount she saw seemed to be dry and old. The tenants had the windows closed and were not using fans in the unit. The tenants were then offered another suite as a solution. The landlord said the tenants always had the option of submitting an application for dispute resolution.

The landlord did not understand why, if the tenants believed the unit caused health problems, they refused to move to another unit.

Once the tenants vacated the unit it was rented the next month. The landlord did not need to make any repairs or complete any remediation in the unit.

The tenants said the unit did not have a bathroom or kitchen fan and that they believed the mold in the walls was going to break through into the unit. The tenants chose to vacate and did not have the money to spend on an independent report.

Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 45 of the Act sets out how a tenant may give notice ending a tenancy. A month-to-month tenancy requires signed, written notice at least the day before the day in the month rent is due. In this case, written notice, if it had been given before March 1, 2014, would have been effective on March 31, 2014. The Act allows a tenant to end a tenancy if a landlord breaches a material term of the tenancy and has not corrected the breach within a reasonable period of time after written notice of the breach has been given by the tenant. Any notice must comply with section 52 of the Act; it must be:

- Signed;
- Dated;
- include the rental unit address; and
- provide the effective date of the notice.

Even if the tenants had proof of a material breach of the tenancy; I find that they failed to give the landlord notice ending the tenancy in accordance with section 45 and 52 of the Act. Verbal notice to the agent's spouse was insufficient. Therefore, I find that the tenant's breached the Act when they terminated the tenancy.

Pursuant to section 44(f) of the Act, I find that the tenancy ended on March 4, 2014; the date the landlord was given the keys to the unit.

As the tenants failed to provide proper notice ending the tenancy they caused a loss of rent revenue to the landlord; who was not given adequate time to locate a new occupant for the balance of the month. Therefore, I find, pursuant to section 65 of the Act, that the landlord is entitled to compensation in the sum of $830.00 for the loss of March 2014 rent and rent revenue.

In the absence of any evidence of the state of the rental unit at the start of the tenancy; such as a copy of the move-in condition inspection report RTB Regulation requires the landlord to present a preponderance of evidence in support of the claim for cleaning costs. In the absence of any evidence, such as photographs or the inspection report completed at the end of the tenancy; I find that the claim for cleaning is dismissed. When the landlord told the tenants everything in the unit was "great" that provides sufficient evidence, on the balance of probabilities, to dismiss the claim for cleaning.

In relation to the tenant's claim for damage or loss as the result of the presence of mold in their unit, I find that the claim is dismissed. There was agreement that several small areas of mold were found in the unit. However, the tenant's submission that there was a serious mold problem in the rental unit was not supported by any evidence. There was only the doctor's note, issued solely on the self-reporting of the tenants. The physician had not been to the home, in order to independently confirm the presence of mold. There was no independent assessment for the presence of mold; such as testing by an accredited laboratory.

In relation to the offer of the alternate rental suite; from the evidence before me, by February 15, 2014 the tenants had agreed to accept a move into another unit. It was the tenants who then attempted to alter the agreement by requesting 3 months' rent abatement. When the landlord responded that the tenants were entitled to move to a new unit and, that they must agree to settle all matters, the tenants refused to move. This refusal appears to contradict the tenant's submission they believed their health was being adversely affected. There was no evidence that the unit offered had mold and the tenant's emails, refusing the move do not reference this concern. From the evidence before me the tenant's refusal to move was due to the landlord's rejection of any rent abatement.

I do not find the landlord's attempt to settle the matters, by asking the tenants to sign, agreeing to cease any claim, unreasonable. The landlord was attempting to mutually settle the matter; the tenants rejected the offer. It was only after the landlord refused to pay the tenants $2,490.00, that the tenants decided not to accept the unit offered. The tenants would have been free to submit an application for dispute resolution at any time; where a decision on the right to compensation would be made. Further, the tenants request for abatement made in mid-February was based on a period of time during which the landlord was largely unaware of any concerns.

Therefore, I find that the claim for moving costs is dismissed.

I find that the landlord's application has merit and that the landlord is entitled to recover the $50.00 filing fee from the tenants for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of $415.00**,** in partial satisfaction of the monetary claim.

I find that the landlord has established a monetary claim, in the amount of $880.00, which is comprised of loss of March 2014 rent and $50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order for the balance of $465.00**.** In the event that the tenants do not comply with this Order, it may be served on the tenants, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

Conclusion

The tenant's application is dismissed.

The landlord is entitled to compensation for loss of rent revenue; the balance of the claim is dismissed.

The landlord is entitled to retain the security deposit.

The landlord is entitled to filing fee costs.

This decision is final and binding and 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 26, 2014

Residential Tenancy Branch