Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction and Preliminary Issues

This hearing was convened in response to an application by the tenant for a monetary order and an order for the return of her security deposit. Both parties participated in the conference call hearing.

At the outset of the hearing, the tenant requested that the matter be adjourned to provide her with an opportunity to respond to the landlord's evidence, which she had received 7 calendar days before the hearing. I asked the tenant how she expected to respond to the evidence and she indicated that her response would be primarily testimony rebutting the landlord's position. She also indicated that she would have submitted utility bills to show that the heat in the rental unit had functioned throughout the tenancy and would have submitted photographs showing the condition of the unit.

The landlords objected to the adjournment as there had already been an extreme delay in addressing issues related to the tenancy as the tenant did not file her claim until almost 2 years after the tenancy ended. The landlords' counsel pointed out that the evidence which the tenant expected to submit was evidence which should have been submitted in support of her claim in any event.

The tenant acknowledged that the evidence she wanted to submit was evidence to support her claim rather than to rebut the landlords' position and stated that the reason she had not submitted evidence to support her claim was because she and a family member had been ill and she could not afford to reproduce and serve all of the evidence on the Branch and on the respondent.

I denied the tenant's request for an adjournment. The evidence the tenant intended to submit was not a response to the landlord's evidence, but was evidence which should have been submitted at the time she filed her claim. The tenant delayed filing her claim for almost 2 full years from the end of the tenancy and had in my view ample time to assemble the evidence she would require to prove her claim. If her financial situation

prevented her from presenting the evidence, she provided no proof to show that her situation had improved to the point that she would now have the money required to reproduce and serve evidence and I was not satisfied that an adjournment would achieve the intended result.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on May 1, 2009, at which time the tenant paid a $350.00 security deposit, and ended on January 31, 2012. The parties further agreed that the tenant did not pay rent in the month of January 2012 and that the landlords agreed to accept her abbreviated notice given on January 20, 2012 that she would be vacating the rental unit on January 31, 2012. They further agreed that the tenant provided her forwarding address in writing on February 24, 2012.

The tenant testified that in late 2009 or early 2010, she discovered mould on the walls of a bedroom and on the window sills of the rental unit. She contacted the landlords who advised her to clean the affected areas with a cleanser designed for that purpose, which was provided by the landlords. The tenant did not observe further issues until the summer of 2011 when her child began experiencing health issues including headaches, rashes and blood clots. The tenant moved her son from his bedroom to the living room in an attempt to address a bedwetting problem and when the son was no longer sleeping in his bedroom, the tenant noticed that his symptoms abated. When the tenant moved the child back to his room in order to prepare him for a regular sleep pattern prior to re-entering school in September, she discovered that his mattress was mouldy. The tenant had her son sleep on couch cushions rather than the mattress. The first night he was back in his own bedroom, the child had a bloody nose.

On or about October 4, 2011, the tenant spoke with the landlords, advised them that her son was experiencing health problems and asked them to arrange for the rental unit to be tested for mould. She reported that the landlords would not agree to pay for testing and suggested that any mould issues may be related to poor housekeeping.

The tenant sent the landlords a letter on November 4, 2011 in which she alleged that she had brought the mould issues to the landlords' attention at least 4 times previously. In the November 4 letter, the tenant asked that the landlords resolve the mould issue within 1 week.

In a letter dated November 6, 2011, the landlords responded to advise that the November 4 letter was the first time the mould issue had been stated as a primary concern and requested that the parties work together to find a time to inspect the rental unit.

The landlords inspected the rental unit on December 4, 2011 and noted their findings, which included observing mould on window sills and in the bathroom. The landlords' notes reflect that in their opinion, the mould growth was directly attributable to the unit's lack of cleanliness.

On December 19, 2011, the tenant arranged for an indoor environmental assessment agency, BDT, to inspect the unit and provide a report indicating the presence and toxicity of mould. The report stated in part that "the levels of mould within the home are considered toxic and high enough to have negative implications on the occupants' health."

The landlords acknowledged having provided the tenant with a cleanser in late 2009 or early 2010. They testified that when the tenant approached them in October and alleged that her son's medical problems were attributable to mould, they asked her for medical evidence proving a connection between the mould she believed to be present and his health issues and she was unable to provide that evidence.

The landlords took the position that until they received the November 4, 2011 letter, they were unaware that the tenant was seriously concerned about mould and that upon receiving notification that mould may be a significant issue in the rental unit, they acted quickly to respond to the tenant's complaint by inspecting the unit on December 4, which was a mutually agreeable time for the inspection. The inspection showed mould around window sills and in the bathroom. In the landlords' notes from the December 4 inspection, they described the rental unit as "an absolute pig sty with clutter everywhere and mountains of clothes piled up on the floor". The landlords attributed the mould growth to the tenant's failure to properly clean the rental unit and apparently took no further action until they received the BDT report.

Upon receiving the BDT report, the landlords arranged for the unit to be inspected by their insurance representative and a restoration company. The landlords reimbursed the tenant for the cost of the BDT report.

In early January, the landlords began working with contractors to inspect the unit and provided correspondence between themselves and the tenant showing that they tried to arrange times for the contractors to attend at the unit. In an email dated January 9, 2012, the landlords told the tenant that she could choose to stay in the rental unit at a

reduced rental rate or she could choose to vacate the unit and perhaps move back in at a later date. In a second email dated January 9, 2012, the landlords reiterated that the tenant did not have to pay rent for January in order to assist her in securing temporary accommodations. On January 20, the tenant gave notice that she would be vacating the rental unit on January 31.

The tenant seeks $8,000 in compensation and the return of her security deposit. She claimed that she is entitled to such compensation because her son was unable to sleep in his bedroom from December 11 to January 31, she had to limit the time spent in the bathroom and she had to wash all of her clothing, towels and linens in order to ensure that she did not bring mould with her to her new residence. She testified that she had to purchase cleaning supplies and a protective mask to wear when cleaning and spent considerable time cleaning the unit. She also rented a storage bin in which she placed her clean belongings to keep them uncontaminated until her move was completed. The tenant further claimed that compensation was warranted because she had been rendered homeless as a result of the mould growth, although she testified that she secured alternative accommodation albeit at a higher rental rate.

Analysis

First addressing the claim for the return of the security deposit, Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlords received the tenant's forwarding address on February 24, 2012 and I find the landlords failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and are therefore liable under section 38(6) which provides that the landlords must pay the tenant double the amount of the security deposit. Although the landlords argued that given the circumstances the deposit should not be doubled, the Act does not give me discretion in relieving them of that liability. I award the tenant $700.00.

Pursuant to section 7 of the Act, the landlords are only responsible for losses resulting from their failure to comply with the Act, regulations or tenancy agreement. Under a claim in negligence, the landlords would only be liable for the tenant's losses if they owed a duty of care to the tenant, they failed to meet that duty of care through their action or inaction and foreseeable losses resulted from that failure.

The landlords have owned this rental unit for 12 years and there is no evidence that they had any knowledge of mould problems prior to this tenancy. The tenant first brought mould to the attention of the landlords in 2009 or early 2010 and appeared to

accept the solution provided to the landlords, which was to use a special cleaning product and thoroughly clean affected areas. Although the tenant believed that she may have contacted the landlords several times between the time she received the cleaning product and October 2011, there is no evidence to corroborate that claim and I find that the tenant did not contact the landlords again until October 2011. I find that the landlords had every reason to believe that the mould issue had been effectively dealt with through careful cleaning.

It would appear that the tenant contacted the landlords on or about October 4 to again discuss mould issues. I find that at this point, the landlords should have taken steps to investigate the complaint. Instead, they chose to wait until they received the tenant's complaint in writing one month later. Upon receiving the written complaint, I find that within a reasonable time the landlords began to take steps to investigate the complaint by scheduling an inspection with the tenant. I accept that the landlords found the rental unit in an unusually untidy state and as their inspection showed mould around window sills and in the bathroom, I find it reasonable that the landlords attributed the mould growth to a failure to properly clean. I find that areas such as windows and bathrooms are subject to a higher level of humidity and condensation and therefore one would expect to have a higher than usual incidence of mould growth in those areas, particularly as mould is common in buildings in the lower mainland because of the humid climate we enjoy and must be continually combated by thorough cleaning.

The landlords clearly acted quickly as soon as they received the BDT report and I find that their actions were appropriate and reasonable as they worked cooperatively with their insurance agent and a restoration company.

Having reviewed the actions of the landlords based on what they observed and what the tenant revealed to them, I find that they met their obligations under section 32 of the Act. Although they could have acted more quickly when they received notice in October 2011 that there was mould in the rental unit, I have no evidence before me that the issue was significantly enhanced during the course of one month. I find that the landlords did not breach a statutory or contractual obligation.

Analyzing the clam in the context of negligence, I accept that the landlords owed a duty of care to the tenant. However, I find insufficient evidence to prove that the landlords failed to meet that duty of care. As stated above, the landlords acted quickly and reasonably early in 2010 when the tenant first reported the mould problem and reasonably assumed that the problem had been corrected through vigilant cleaning using the specially formulated cleaning agent they provided. Again, although the landlords could have acted in October 2011 when the tenant first reported another

mould problem, I am not satisfied that the mould problem increased from the time they first heard of it until the time they started arranging for an inspection one month later.

Because the tenant has not proven that the landlords failed to meet their duty of care, the claim in negligence must fail. The claim for compensation for losses resulting from mould is dismissed.

I note that I have not addressed the source or intervening causes of mould growth. It is, in my view, sufficient to note that mould is a pervasive problem in the coastal area of British Columbia, affecting most households. But regardless of whether the mould grew due to the tenant's failure to adequately clean or because it was growing behind walls where she could not clean, and I make no finding on that question, the landlords had an obligation to investigate and address the problem as soon as they were made aware of it.

I further note that even if I had found that the landlords had breached their duty of care, the tenant provided no medical evidence to corroborate her claim that she suffered health issues as a direct result of exposure to mould, nor did she provide evidence of her expenses such as laundry costs or the cost of renting a storage bin. Any award I would have made would have been nominal and would certainly not have exceeded the amount of rent which had been payable for January 2012 and was forgiven by the landlords.

Conclusion

The tenant is awarded $700.00 which represents double the security deposit and I grant the tenant a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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: May 14, 2014

Residential Tenancy Branch