



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Glassman Property Management Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; to recover the filing fee from the landlord for the cost of this application; and other issues.

The tenant and landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on November 01, 2008 for a fixed term tenancy. The tenancy then reverted to a month to month tenancy at the end of the fixed

term. Rent for this unit was original \$995.00 but increased to \$1,094.00 on November 01, 2013. The tenant vacated the rental unit with a months' notice on January 31, 2014.

The tenant testified that he had had no proper heat in his unit for two years. Even through the landlord had replaced the furnace for the building the tenant still did not get heat to his unit. The landlord did send someone to the tenant's unit to replace a zone valve on the tenant's heater and at that time the tenant noticed a large area of black mould on the walls which had been hidden behind the curtains a, bookcase and television. The tenant testified that previously he had only noticed mould in the corners of the windows and frames which the tenants had been wiping off. The tenant testified that he had to suffer with black toxic mould in his unit which was detrimental to his health. The tenant testified that he informed the landlord about the mould on December 13, 2013 and was told to wipe it down, to keep the windows closed and to dry any condensation off the windows. The tenant testified that he e-mailed the landlord and requested a professional company to come and remove the mould as the tenant did not want mould spores getting into the air in the unit.

The tenant testified that the landlord requested that they send someone in to clean the mould on December 16, 2013. The tenant responded and informed the landlord that the landlord could only enter to take photographs of the mould but cleaning was not to take place because the tenant did not want the cleaning process to disturb any mould spores. The landlord asked the tenant to complete a work order which the tenant testified he did on December 16, 2013. The tenant testified that he just wanted the landlord to use a professional company to remove the mould to protect the tenant's health.

The tenant testified that as the landlord was not prepared to bring in a professional company to deal with the mould the tenant decided to give Notice to End the Tenancy on December 31, 2013 and vacated the rental unit on January 31, 2014. The tenant seeks to recover the cost incurred to move from the unit of \$724.00 and an invoice from

the moving company has been provided by the tenant in documentary evidence. The tenant also seeks to recover the filing fee of \$50.00 from the landlord.

The landlord testified that on December 10, 2013 the tenant emailed the landlord about heating problems in his unit. The landlord testified that they exercised their due diligence and sent a plumber in to the tenants unit who fitted a new zone valve on his radiator on December 13, 2013. The tenant alluded to the mould issues being caused by a lack of heat. On December 13, 2013 the tenant sent an email about the mould and the landlord asked the tenant to complete a work order so the landlord could go to the tenant's unit to look at the mould. If any tenant has an issue with mould they are asked to wipe condensation from windows before the landlords go in.

The landlord testified that the tenant completed the work order on December 17, 2013 and the landlord went to take photographs of the mould on that day. The landlord testified that this is a 500 square foot unit and it was very cluttered and an additional person appeared to be saying there. All of this adds to the humidity in a small unit and condensation will cause mould to grow. The landlord testified that the tenant did not have proper ventilation in the unit and the amount of mould that was seen must have been there a long time and could not have grown in a few weeks.

The landlord testified that after her inspection they wanted to go into the unit and remove those sections of dry wall affected by the mould using their own maintenance man to do this work; however, the tenant insisted on a professional company doing the work. The landlord testified that the building manager also offered to come and wipe the walls and windows. The landlord testified that the tenant refused to allow the landlords access to remediate this problem until after the tenancy had legally ended.

The landlord testified that the tenant also failed to adhere to s. 27 of the tenancy agreement concerning mould and the tenant did not give the landlord's time to remediate the mould issue before the tenant gave Notice to End Tenancy on December 31, 2013. The landlord testified that after the tenancy legally ended the landlord's

maintenance man went in and removed the affected drywall. The mould was found to only be on the surface of the drywall and so new drywall was installed, the walls repainted and the unit was re-rented for February 01, 2014. Since that time the new tenant has not experienced any problems with condensation or mould. The landlord testified that due to the above the landlords cannot be held responsible for the tenant's moving costs.

The tenant argues that the landlord would not acknowledge that black mould is toxic and the tenant did not want the landlord to do these repairs as any toxic mould is harmful to a tenant's health. The tenant testified that two years prior to this the tenant had been verbally asking for his heating to be repaired. The tenant testified that his thermostat read 16 degrees and when the landlord came her thermometer read 18.5 degrees. As the heat valve was not replaced this caused the condensation. The tenant testified that he had got used to not having heat and only had a problem when the temperature outside dipped to -5 degrees.

The landlord responded and testified that they have no documentation to show that the tenant complained about a lack of heat until December 10, 2013, the tenant sent no emails or work orders. The landlord testified that not all black mould is toxic and the tenant was extreme in not allowing the landlords to do the repairs.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim to recover the cost to move from the unit due to mould issues; a tenant must put in writing to a landlord any concerns about the unit. A tenant must also be vigilant with condensation and ventilation in their unit. This has been reinforced by a clause in the tenancy agreement entered into between the parties.

I have reviewed the photographic evidence sent by both parties and find the level of mould would likely have been present for some time in the tenant's unit. Just because this mould was black in colour does not necessary mean that this was black toxic mould and I have insufficient evidence from the tenant to support the tenant's claim that the mould was toxic. I further find that the tenant did not give the landlord sufficient time to remedy this problem before the tenant gave Notice to End the Tenancy.

It is therefore my decision that it was the tenant's choice to move from the rental unit and as such the tenant is not entitled to recover the cost of moving from the landlord.

As the tenant has been unsuccessful with their claim I find the tenant must bear the cost of filing their own application.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply

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: June 27, 2014

Residential Tenancy Branch

