# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing dealt with the landlord's claim for monetary compensation. The landlord and both tenants participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

In the hearing the landlord stated that he was able to re-rent the rental unit for June 1, 2104, and I therefore amended his monetary claim to remove the amount claimed in lost revenue for June 2014.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on July 1, 2014 as a fixed-term tenancy to end on June 30, 2014. The monthly rent was $900.

In October 2013 the tenants notified the landlord of a problem with mould in a closet. From October 28 to November 3, 2013 the landlord worked to remove the mould problem in the closet. On December 16, 2013 the tenants informed the landlord of their concern about the air quality in the rental unit, and on December 17, 2013 the landlord provided the tenants with an air filter.

On February 22, 2014 the tenants gave the landlord verbal notice that they intended to vacate the rental unit on March 5, 2014. The tenants gave the landlord written notice to this effect on February 26, 2014. The tenants did not pay rent for March 2014, and they vacated the rental unit on March 5, 2014.

*Landlord's Claim*

The landlord stated that the tenants broke the lease with one week's verbal notice, claiming adverse health effects and unfit living conditions due to extensive mould. On March 10, 2014 an air quality assessment was carried out in the rental unit, and the landlord stated that the results showed that there was no mould in the unit. The landlord stated that the unit sat empty for a while and then he began some renovations on the unit in late March. The renovations were complete in very early May, and the unit was re-rented for June 1, 2014.

The landlord stated that there was plenty of potential ventilation in the rental unit. The landlord submitted that there was no concrete evidence that the suite was causing the tenants' illness. The landlord's evidence was that the last time they heard from the tenants about the air quality was when they asked for an air filter, on December 16, 2013.

The landlord has claimed unpaid rent and lost revenue of $2700 for March, April and May 2014, as well as $514.50 for the air quality test.

*Tenants' Response*

The tenants stated that when the landlord worked on the closet, they believed he only "stirred up" the mould. They stated that the air filter helped with their breathing, but not with the symptoms. The male tenant submitted evidence from his doctor showing that the tenant had severe reactions that the tenant attributed to the mould in the rental unit. The male tenant's doctor advised the tenant to move out.

The tenants' response to the air quality assessment was that testing of air quality is not the same as a mould test. The tenants submitted that the test is only a reflection of the air quality at the moment that the test is done. The tenants stated that they had received indirect information suggesting that the landlord did not inform the assessor that there was mould in the house, so the test therefore does not show if there is mould in the suite.

The tenants submitted that the rental unit is in a 1950s house and it does not have adequate ventilation. The tenants' position was that the landlord knew about the mould for a long time but did not deal with it professionally or effectively, and as the landlord failed to correct the situation within a reasonable time after the tenants first contacted him about it, they had grounds to terminate the tenancy.

Analysis

The tenants have relied on section 45(3) of the Act to argue that they had grounds to terminate their tenancy. Under that section of the Act, if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. In this case, I agree that providing a safe, healthy living environment is a material term of the tenancy, and it is possible that the tenants' health problems arose from the presence of mould in the rental unit. However, I find that the tenants did not give the landlord written notice as required under section 45. The last time the tenants communicated with the landlord about the mould or air quality was in December 2013, when they requested and the landlord provided an air filter. The tenants did not communicate further problems and led the landlord to believe the problem had been resolved. The tenants ought to have given the landlord clear written notice that they believed the mould problem still existed and given him a reasonable time to correct the situation before terminating the tenancy. Instead, the tenants simply informed the landlord that they were vacating. The tenants did not have grounds under section 45(3) to end the tenancy.

I find that the landlord is entitled to unpaid rent and lost revenue for March 2014. Rent was due in full on March 1, 2014 and the tenants did not pay. The tenants occupied the rental unit until March 4, 2014. It would not be reasonable to expect the landlord to attempt to re-rent the unit for March 2014.

I find that the landlord is not entitled to lost revenue for April and May 2014, as the landlord chose to renovate the unit at that time rather than attempt to re-rent it, and he therefore did not mitigate his loss.

I find that the landlord chose to do the air quality assessment after the tenants vacated, and therefore the tenants are not responsible for the cost of the assessment.

As the landlord's application was only partially successful, I find he is entitled to partial recovery of his filing fee, in the amount of $25.

Conclusion

I grant the landlord an order under section 67 for the balance due of $925. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the landlord's application 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: August 28, 2014

Residential Tenancy Branch