Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Nacel Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This was the reconvened hearing dealing with the tenants' applications for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied for a monetary order for a return of their security deposit, a monetary order for money owed or compensation for damage or loss, and for recovery of the filing fee paid for this application.

This hearing began on March 25, 2014, and dealt only with evidence matters as the landlord claimed they had not received the tenants' documentary evidence. The tenants were directed to resubmit their evidence to the landlord.

The parties were informed at the original hearing that the hearing would be adjourned in order to consider the issues contained in the tenants' application.

At the reconvened hearing on May 14, 2014, the hearing began; however, due to the length of the testimony of the parties, the hearing could not be completed. The parties were informed the hearing would be adjourned again, and reconvened to conclude the oral submissions of the parties.

This hearing proceeded on the balance of the tenants' original applications for dispute resolution.

During all the hearings, the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to a return of their security deposit, further monetary compensation, and for recovery of the filing fee paid for this application?

Background and Evidence

The undisputed evidence shows that this tenancy began on September 3, 2014, when the tenants moved into the rental unit, that they vacated the rental unit on September 27, 2014, monthly rent was $1050, and that the tenants paid a security deposit of $525. The testimony indicated that since the tenancy ended, the landlord has returned a portion of the tenants' security deposit, in the amount of $471.

The tenants' monetary claim is $5540.14, comprised of the following:

Reimbursement of September rent	$1050
Deduction from security deposit	$54
Storage costs	$304.45
Moving costs	$334.69
Food costs	$408
1 airplane ticket	$279
Prescription	$110
Compensation	$2500
Fuel and time in locating new rental unit	$500

The tenants' relevant documentary evidence included, but was not limited to, photocopied pictures of medications, information regarding an airline flight to Calgary, a storage receipt, pictures taken in the rental unit, a written demand to the landlord from the tenants, dated September 5, 2013, informing them that the tenants intended on vacating the rental unit due to the condition, unless the landlord agreed to replace the carpets, another notice to the landlord, dated September 14, 2013, informing the landlord that the tenants were vacating due to their refusal to replace the carpet, and a moving receipt.

The landlord's relevant documentary evidence included a letter from the tenant currently residing in the rental unit, a written account of the events as stated by the landlord's agent, a condition inspection report, and photographs of the rental unit.

The parties' testimony included the following:

1. *Reimbursement of September rent-*

The tenants submitted they were entitled to reimbursement as the rental unit was not clean or in a liveable condition, and in particular, the tenants submitted that the carpets were mouldy and stained. The tenant submitted that the rental unit contained toxic black mould, which led to a request of the landlord to replace the carpet for health reasons, on September 5, 2013.

The tenants submitted that they would not move into the rental unit had they known of the unsanitary conditions and that the landlords had made a written guarantee that the rental unit would be satisfactory, or all charges would be waived.

As to the condition inspection report, the tenants submitted that they were rushed in signing the document as they were to check out of the hotel at 2:00 and that it was signed in the landlord's office.

The tenants referenced their photographs as proof of the mould present in the rental unit.

Landlord's response-

The landlord's agent, LV, submitted that the male tenant phoned in August 2013, and was informed that only 1 rental unit was available at a lower price. LV contended that the male tenant was ill when he arrived and that they stayed in the rental unit for a few days without complaint. When the tenants approached the landlord about a carpet replacement, they were informed that a new carpet would be for a higher rent, as explained to them prior to the tenancy.

The landlord's agent, EM, stated that the tenants were informed the carpets were stained, but that they would be steam cleaned.

The landlord's witness, MD, who submitted he had an expertise in mould and building conditions and had inspected the rental unit, stated that the mould to which the tenants referred was a food grade mould and not dangerous in any form.

MD stated that the food grade mould would not adversely impact the tenant's health, and that just because mould might be present does not mean the mould is toxic. MD also submitted that the tenant JW was clearly suffering from a pre-existing condition.

MD pointed out that the spot referenced by the tenants in their photos showing what they called toxic mould, was less than 4 square inches and that the black part shown in the photographs was from water ingress. MD submitted that the rental unit was habitable and that if the tenants had truly been concerned for their health due to mould, they would not go about the rental unit in bare feet, as was shown in their photographs.

EM submitted further that the tenants stated the rental unit was filthy, but questioned this statement as they accepted the rental unit in that condition and signed the condition inspection report.

It must be noted that the condition inspection report signed by both parties notated that the carpet was stained, but cleaned.

Tenants' rebuttal to the landlord's submissions-

The tenants denied looking at the cheaper unit, that JM had the flu, as he had a sinus infection, and that they failed to complain until September 5, as they made a phone call to the landlord the day following their move in.

The tenants agreed they were not mould experts, but that they had a severe allergic reaction to the mould.

Landlords' further response-

LV submitted that JM informed her they wanted as cheap a rental unit as possible, as money was an issue and that JM was completely sick when they arrived.

DM re-emphasized that had the tenants been concerned for their health due to the state of the carpet, logic would suggest that they would not be barefoot.

DM, apparently in anticipation of the tenants' further claim, submitted that the medications listed by the tenants were over the counter, there has never been any case of mould spores triggering infections, and that a mould reaction would only trigger a shortness of breath in the case of asthma.

2. *Deduction from security deposit-*

The tenants submitted the landlords wrongfully made a deduction from their security deposit prior to returning the balance. The tenant's written forwarding address was provided on September 14, 2013.

In response the landlord's agent LV submitted that she charges $45 per hour for cleaning, and that as the tenants used the kitchen and bathroom, it was necessary to clean the rental unit after the tenants vacated.

3. *Storage costs; Moving costs-*

The tenant submitted they were entitled to these costs, due to the lack of response from the landlord as to another rental unit, as they did not want to move their personal property into the rental unit in that state. The lack of response resulted in 3 days for a truck expense and a storage unit rental so that the tenants could store their property while finding a suitable alternate rental unit.

In response, LV submitted that she never saw a moving truck.

EM submitted that their pricing for the different rental units they manage are different, as rental units with older carpets are for a less monthly rent and rental units with new carpets are charged at a higher rate, which was explained to the tenants. EM suggested that the tenants were attempting to have higher a priced unit for the cheaper price.

4. *Food costs-*

The tenants submitted that as they could not use the kitchen due to the condition of the carpet, they ate only cereal and toast there, and had to eat all other meals out.

The landlord submitted that if the tenants could make simple breakfasts, they could also prepare simple lunches in the rental unit. The landlord submitted further that there was a new range, oven, and refrigerator in the rental unit and that there had been obvious signs of cooking.

5. *1 airplane ticket-*

The tenants submitted that JM's condition required that he fly to Calgary to visit his family doctor because the family doctor already had his records regarding his allergies.

The tenants confirmed they did not seek medical assistance locally.

In response, the landlord submitted that the medical plans of the local province and the tenants' home province worked in conjunction with each other, and the medical assistance would be paid for. The landlord submitted further that the tenants were attempting to sell their home in Calgary, which could be a possible reason for the flight to Calgary, pointing out that the receipt showed a date of September 25.

6. *Prescription-*

The tenants submitted that the antibiotic for JM's condition cost $110, as a result of an allergic reaction.

In response, the landlord submitted that the evidence shows JM has a history of allergy issues.

7. *Compensation-*

The tenants submitted that the value of this request lies in the fact that tenant MM could not seek employment, as there was not an internet connection in the rental unit due to no fully moving in. Additionally, JM's illness caused him to stay in Calgary for a month, leading to family separation, time, stress, and loss of a job. The tenants agreed it would be hard to quantify the value of stress.

In response, the landlords submitted that the tenants' rental application shows that the tenants have only owned a home, not rented, so they were unable to obtain a reference. Additionally, the tenants listed their employment as being self-employed, and provided no evidence that they have suffered a loss.

8. *Fuel and time in locating new rental unit-*

The tenants claim further that the condition of the rental unit required that they locate a new rental unit.

Analysis

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must

compensate the other party for damage or loss that occurs as a result, so long as the applicant verifies the loss, as required under section 67. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss.

Section 32 of the *Act* provides that a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and is suitable for occupation by a tenant when considering the age, character and location of the rental unit.

With the exception of the tenants' claim for the balance of their security deposit, the entire monetary claim of the tenants rests with their assertion that there was toxic mould in the rental unit, which caused the rental unit to be uninhabitable and to have caused the tenants to suffer mentally, physically and financially.

As the party making the claim I find the burden of proof rests with the applicants to prove that there was not only mould in the rental unit, but the mould was of a toxic nature, causing their health problems and rendering the rental unit unfit to live in.

I find the tenants have failed to establish that there was toxic black mould present in the rental unit, such as through a mould assessment report or air quality reports. On the other hand, the landlord produced a witness, with an expertise in the area of mould, who disputed that the mould was toxic or would cause any health risks, while the tenants confirmed no expertise in the area of mould.

I additionally considered that the move-in condition inspection report showed that the carpet was stained, but cleaned, and that the tenants chose to accept and move into the rental unit, fully aware of the condition of the carpet.

I further find the tenants have provided no basis under the Act for their claim that the landlord should be responsible for a flight to Calgary by tenant JW or his medication, especially in light of their son's testimony that JW had a pre-existing medical condition or why JW would be required to stay in Calgary for a month.

Taking all the relevant evidence into account as mentioned above, I find the tenants have supplied insufficient evidence that the condition of the rental unit did not comply with health, safety, and housing standards, or that there was dangerous or toxic mould in the rental unit, and as a result, I find the tenants have not proven their claim for monetary compensation for reimbursement of September rent, storage, moving or food costs, an airplane ticket, prescription costs, general compensation or for fuel and costs for finding another rental unit.

As to the tenant's claim for reimbursement for the balance of their security deposit, under section 38(1) of the Act, at the end of a tenancy a landlord is required to either return a tenant's security deposit or to file an application for dispute resolution to retain the security deposit within 15 days of the later of receiving the tenant's forwarding address in writing.

In the case before me I find that the landlord had received the tenant's written forwarding address on September 14, 2013, the tenancy ended on September 27, 2013, and that the landlord failed to file an application or return the full amount of the tenants' security deposit within 15 days of September 27, 2013.

Section 38(6) of the *Act* states that if a landlord fails to comply, or follow the requirements of section 38(1), then the landlord must pay the tenant double the amount of their security deposit.

In this case, as the landlord retained the amount of $54, without authority, I find the tenants are entitled to a monetary award of $108, comprised of double the balance of their security deposit.

As I have found partial merit with the tenants' application, I award them recovery of a partial filing fee. As their filing fee was $100, I grant the tenants a monetary award of $50.

Due to the above, I find the tenants are entitled to a total monetary award of $158, comprised of the balance of their security deposit of $54, doubled to $108, and a partial recovery of their filing fee, for $50.

Conclusion

The tenants' application for monetary compensation is granted in small part.

I grant the tenants a final, legally binding monetary order pursuant to section 67 of the Act for the amount of $158, which is enclosed with the tenants' Decision.

Should the landlord fail to pay the tenants this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The landlord is advised that costs of such enforcement are recoverable from the landlord.

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 11, 2014

Residential Tenancy Branch