



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cascadia Apartment Rental Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RP, FF

Introduction

This hearing dealt with an application by the tenant for an order compelling the landlord to perform repairs and a monetary order. Both parties participated in the conference call hearing. The tenant was represented at the hearing by his wife and for that reason is referred to in the plural in this decision.

The tenants gave testimony at the outset of the hearing and addressed each of their claims. The tenants then apparently muted their telephone at 9:12 as they remained connected to the conference call but could not be heard. I told the tenants that I could not hear them speaking and asked them to hang up the telephone and phone into the conference again. The tenants did not disconnect from the call and did not speak further during the hearing despite having been invited several times to do so. The hearing proceeded without further participation from the tenants as they had already addressed each element of their claim.

Issue to be Decided

Should the landlord be ordered to perform repairs?
Are the tenants entitled to a monetary order as claimed?

Background and Evidence

The tenancy has been ongoing for approximately 2 years and the tenants pay \$1,150.00 per month in rent. The parties agreed that at some point during the summer, a leak developed in the wall which caused water to flow under the kitchen flooring. The tenants claimed that they were unable to use their kitchen cupboards for several months because of a silverfish infestation and further claimed that because the landlord sprayed a chemical to address mold growth, the male tenant became ill and had to be hospitalized several times. The tenants provided copies of pharmaceutical records showing medications prescribed as a result of these hospital visits and also provided photographs of their cupboards and stove.

The tenants originally requested that the landlord replace flooring, but at the hearing advised that the flooring had all been replaced. I consider that claim to have been withdrawn.

The tenants asked that the landlord be ordered to clean the sides of kitchen cabinets which face the stove as well as sides of the stove. The landlord agreed that they would perform this cleaning and M.D., the landlord's health and safety inspector, testified that he had inspected the unit and found no sign of surface mold in the areas shown on the photographs but found rust which did not pose a health hazard.

The tenants seek to recover one month of rent in the amount of \$1,150.00 as well as their security deposit. They claim that they are entitled to compensation because they were unable to use their cupboards and because the male tenant had to be admitted to the hospital on three occasions in recent months which they attribute to the chemical sprayed by the landlord.

The landlord's property manager testified that when the landlord was repairing the leak and remediating after the repair, they had to move food out of the tenants' cupboards on several occasions. The landlords were unaware of any period of time in which the tenants were unable to use the cupboards.

The landlord referred to the tenants' evidence showing prescribed medications and noted that the medications were for heart and stroke issues, hypertension, cardiovascular treatment and other issues unrelated to respiratory issues which the tenants claimed were present. M.D. testified that Health Canada has established guidelines to determine whether mold exposure controls should be put in place but these measures are not required unless there is an aggregate of 1 square metre of mold growth. In the rental unit, there was less than 1 square foot of mold growth so M.D. did not implement mold exposure controls.

The tenants also seek the return of the filing fee paid to bring their application.

Analysis

The landlord has agreed to perform cleaning on the exterior of the cupboards and stove as shown in the tenants' photographs. As the landlord has agreed to perform this cleaning, it is unnecessary for me to deal with this claim except to instruct the landlord to complete the cleaning within a reasonable period of time.

The tenants bear the burden of proving their monetary claim. The tenants are not entitled to the return of their security deposit while the tenancy is still ongoing. The deposit will be dealt with in accordance with the Act when the tenancy has concluded.

The tenants provided lists of the medications prescribed as a result of hospital visits, but did not provide doctors' notes indicating why hospitalization was required or clearly linking the visits with the mold treatment at the rental unit. I find insufficient evidence to show that the male tenant had to be hospitalized as a direct result of the landlord's actions. Further, the list of medications provided by the tenants appears to be related to ongoing health issues unrelated to mold. I find that the tenants have failed to prove that any of the health issues for which the male tenant required treatment were directly related to the conditions at the rental unit.

The tenants claimed that they were unable to use cupboards in the kitchen for several months, but the landlord claims that when they needed to access the cupboards to work, they had to remove food from the cupboards. As the tenants provided no evidence to corroborate their claim that they were unable to use the cupboards, I am unable to find that the cupboards were unusable.

I have found no basis for awarding compensation to the tenants. While they experienced some inconvenience as a result of the leak, it appears the landlord acted quickly to remedy the issue and I am unable to find that the tenants experienced a loss of quiet enjoyment to a degree that would warrant compensation. I therefore dismiss the claim.

The tenants seek to recover the \$50.00 filing fee paid to bring their application. The tenants were only successful in one part of their claim and as the landlord agreed to perform the cleaning requested, I find that it was likely that the landlord would have agreed to complete this work without the tenants having filed an application. I therefore find that the application was unnecessary and find that the tenants should bear the cost of the filing fee.

Conclusion

The landlord will perform cleaning as outlined above. The balance of the tenants' claim 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: November 24, 2014

Residential Tenancy Branch

