



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC OLC ERP RP PSF

Preliminary Issues

At the outset of the hearing and upon review of the Tenants application for Dispute Resolution the Tenants confirmed that they wished to amend their application as they vacated the rental unit on May 31, 2015 and ended their tenancy. The Tenants stated that they were withdrawing their requests for Orders against to the Landlord to comply with the *Act*, regulation and tenancy agreement and to make repairs. .

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenants on April 29, 2015 seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord's Agent, the Landlords' legal counsel, hereinafter referred to as Counsel, and both Tenants. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord's Agent submitted evidence on behalf of both Landlords while the Tenants' submissions were presented by the female Tenant S.H. and confirmed by the male Tenant G.R. Therefore, for the remainder of this decision, terms or references to the Landlords and the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the testimony and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Tenants met the burden of proof to be awarded monetary compensation?

Background and Evidence

The undisputed evidence was that the parties entered into a written month to month tenancy agreement that began on September 19, 2014. Rent of \$1,400.00 was payable on or before the first of each month and on September 19, 2014 the Tenants paid \$700.00 as the security deposit. On May 15, 2015 the Tenants sent an email notice to end their tenancy effective May 31, 2015.

The Tenants testified that the move in condition inspection report form was completed on September 19, 2014 in the presence of the male Landlord G.S. The Tenants noted that G.S. neglected to sign the condition form along with the female Tenant S.H.

The Landlord testified that her parents do not read English and so they leave all paperwork to be completed by her. The Landlord argued that she was present, with her father, when the Tenants were handed the keys to move into the rental unit and a condition inspection report form was not completed at that time. Rather, the Tenants were given the condition report form to complete on their own and to return to the Landlords. The Landlord stated that the first time they received a copy of the condition inspection report was with the Tenants' evidence.

The Tenants submitted that they have sought monetary compensation for loss of quiet enjoyment resulting from several months of making requests to have repairs completed. They argued that the rental unit was full of mold. The Tenants asserted that they requested the mold be repaired each month when they paid their rent until a blow-out argument occurred on April 1, 2015.

The Tenants submitted that the Landlords' lack of action took a toll on their health. As such they are seeking monetary compensation equal to \$2,800.00 which is comprised of the return of their April 2015 rent payment plus an Order excusing them from having to pay rent for May 2015. They indicated that they were withdrawing their original request for the return of their security deposit listed on this application as they now realize that that request was premature.

In support of their application the Tenants submitted documentary evidence which included, among other things, their written submissions, a listing of digital photographs, and 27 printed photographs. The Tenants stated that their photographs taken of inside the access panel behind the bathroom water taps were taken on October 8, 2014. The Tenants argued that those photographs displayed the presence of black and white mold.

The Tenants testified that they had put their repair requests in writing on two separate occasions and the Landlords refused to accept those requests. They confirmed that they did not submit documentary evidence that would support they issued written requests for repairs.

The Landlord testified that although the Tenants were instructed to deal directly with her in regards to their tenancy, at no time did the Tenants tell her about the presence of mold in their rental unit. She said the first time she heard about the alleged presence of mold was in May 2015 when her father told her of the Tenants' complaint.

The Landlord asserted that this matter was related to the fact that the Tenants did not pay their May 2015 rent. She argued that the Tenants were constantly asking for repairs and reduced rent throughout the entire tenancy and at no time, prior to May 2015, had they mentioned mold to her. The Landlord noted that when she went to serve the Tenants with a 10 Day Notice on the May 2, 2015 the Tenant was upset and threw the notice on the ground and then told the Landlord that they would be receiving dispute papers in the mail.

Counsel argued that there was no evidence provided that would prove the black and white substances shown in the pictures were in fact mold. Rather, the discoloring is indicative of the rental unit being an older home or burn marks from plumbing. Counsel noted that there was no indication of the presence of mold written on the condition inspection report form and stated that it would be unlikely that the presence of mold would be missed when considering the detail that was written on the condition form for other issues.

Counsel asserted that if the Tenants truly suspected the presence of mold back on October 8, 2014 they would not have waited until April or May 2015 to raise the issue. Especially when they were constantly raising other issues and requesting reduced rent. Counsel noted that the Tenants did not submit specific evidence as to when they allegedly informed the Landlords of the presence of mold, they only stated that it was on the days they paid their rent. Furthermore, there was no evidence that the Tenants' health had been affected. Counsel submitted that these Tenants had a history of fabricating complaints in order to get reduced rent and argued that this claim is about money not mold.

In support of their position the Landlords submitted a volume of documentary evidence which included, among other things, copies of receipts for repairs and maintenance to the rental unit; the maintenance person's written statement; the Landlords' written statement; the tenancy agreement; photographs of the rental unit; and emails between the parties.

In closing the Landlord requested the Tenants provide them with their forwarding address. After a brief discussion I informed both parties that section 39 of the Act provides that a landlord may keep the security deposit if a tenant does not give the landlord their forwarding address within one year after the tenancy ended.

The Tenants decided to provide their forwarding address to the Landlord during the hearing. The Landlord acknowledged that as of the date of the hearing, June 5, 2015, they were in receipt of the Tenants' forwarding address as listed on the front page of this Decision.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Section 7 of the Act provides as follows in respect to claims for monetary losses and for damages made herein:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In the case of verbal testimony when one party submits their version of events, in support of their claim, and the other party disputes that version, it is incumbent on the party making the claim to provide sufficient evidence to corroborate their version of events.

The burden of proof lies with the Tenants to prove there was the presence of mold inside the rental unit which caused them a loss of quiet enjoyment and which took a toll on their health. The Tenants also bear the burden to prove they did what was reasonable to minimize any damage or loss.

Based on the above, I find that the Tenants provided insufficient evidence to meet their burden of proof. I made this finding in part due to Tenants' failure to submit evidence such as: a certified building inspection that indicated the presence of mold; medical documentation supporting the Tenants suffered ill effects from the presence of mold inside their rental unit; and a written request from the Tenants issued to the Landlord for the request mold remediation. Furthermore, I find the Tenants did not do what was reasonable to mitigate their loss. If the Tenants truly found the presence of mold back on October 8, 2014, they ought to have sought a remedy then and not six or seven months later. Accordingly, I dismiss the Tenants' application in its entirety.

Conclusion

The Tenants have not met the burden of proof and their application is dismissed, 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 08, 2015

Residential Tenancy Branch

