



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

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; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord's agents 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. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

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 month to month tenancy started on February 01, 2013. Rent for this unit was \$1,277.00 per month plus \$40.00 for parking.

NE testified that they suffered from a water leak in their unit. This was first noticed on October 21, 2014 and the landlord was notified. The landlord sent contractors in to determine the cause of the leak and this was ongoing from October to January. The tenants had to deal with wet carpet, stains and mould during this period and had concerns about the health of their baby and young child. NE testified that the smell of mould became intense in their unit and they decided to give their notice in December to end the tenancy for the end of January, 2015.

NE testified that rent was paid for January; however, around the beginning of January the contractor came and opened up the wall in the living room. This hole was then only covered by a black garbage bag and the room smelt worse of mould and became very cold. The tenants decided that they could no longer live in the unit and started to move their belongings out on January 08. The landlord was notified that they could gain access to the unit for contractors to repair the water leak and subsequent damage. NE testified that they could not move into their new unit and so had to go and stay at a friend's one bedroom basement unit. BE testified that although they did not have to pay their friend rent to stay in her unit they did buy groceries, they took her out for dinner and put gas in her car as a way to thank her.

BE testified that the work that was carried out by the landlord's men in October, November and December was not too bad but after this larger hole was made in the wall in January, it just became impossible to live in the unit with the smell of mould and the cold. The workers never informed the tenants when they would return to complete the work and although the landlord was kept updated by the tenants they did not inform the tenants of their plans to fix these issues. BE testified that the landlord's managers were great but the tenants had to move quickly due to concerns about health issues.

TV agreed there were issues in the tenant's unit; however, they disputed the tenants claim to recover rent paid for January, 2015. TV testified that from October 21, to January they acted in a timely manner and came into the unit many times. There was

also a period in December where there were not many issues but it all started up again in January. TV testified that the tenants had a lot of furniture and sometimes it was difficult to find the source of the leak. The tenants had said they would move out gradually during January but after they moved their belongings out, that was when the landlords saw the mould.

EG testified that water leaks are often a unique problem; the landlord acted quickly when informed of the leak and called in professionals to deal with it.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 32(1) of the *Act* which states:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I am satisfied that the landlord did act in a timely manner to try to remedy these water leaks in the tenants' rental unit; however, the fact remains the tenants had to live with these leaks, a wet carpet and growing mould during this period. I find the landlord cannot expect a tenant to live in these conditions for an extended period of time and with no communication of an end result. I find the mould shown in the tenant's evidence along with the wet carpeting and a hole in the wall covered with black plastic would be sufficient reason for the tenant to end the tenancy for health and safety reasons regardless of whether or not they had very young children.

The tenants were willing to work with the landlord throughout concerning access to the unit and subsequent repairs and investigations and I feel the tenants were at liberty to end their tenancy and did so with proper notice. It is my decision that the tenants should be compensated for having to vacate their rental unit when it became too difficult to continue to reside there and with their concerns for theirs and their children's health. I therefore find in favor of the tenant's application to recover the rent paid for January of **\$1,277.00** in compensation for having to vacate the rental unit.

As the tenant's claim has merit I find the tenant is also entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*

Conclusion

I HEREBY FIND in favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,327.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced through the Provincial Court as an Order of that Court.

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 10, 2015

Residential Tenancy Branch

