



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, RR, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for the return of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for a rent reduction for repairs services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to recover their security deposit?

- Are the tenants entitled to a rent reduction for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties agreed that this tenancy started originally in January, 2013 and each year the tenancy agreement was renewed for a new fixed term. Over the course of the tenancy, tenants named on each agreement left the tenancy and new tenants or occupants were added to either the tenancy agreement or as occupants to the unit. The parties agreed that BL was a tenant named on the last tenancy agreement entered into on May 01, 2015 although BL did not actually sign the tenancy agreement. The other tenant named on that final agreement was MB and GM. It was agreed that MB left the tenancy in June 2015 with the agreement of the landlord and the tenancy continued with BL and GM as tenants with JW as an occupant. Rent for this unit at the end of the tenancy was \$1,330.00 due on the first of each month. The tenants originally paid a security deposit of \$625.00. This was dealt with at a previous hearing on March 01, 2016. The file number for that hearing is written on the front page of this decision.

The tenant BL testified that on September, 16, 2015 he noticed that water was coming into his bedroom from a leak in the bathroom. The landlord was contacted straight away. The water was coming through the floor soaking the carpet, baseboards and drywall. This took the landlord over a month and a half to fix the problem but the dry wall repair was not completed. BL testified that he had two new tenants waiting to move into the unit but when they knew about the water leak and hole in the bathroom wall they decided not to move in.

BL testified that the leak was coming into the closet in his room and this caused mould to grow in this area which affected the tenant's clothes between September and October, 2015. The water and subsequent mould also started to affect the tenant's dresser, bedding and linens and his bed. BL testified that he started to become ill so on

September 20, 2015 he moved his belongings into the living room and started to sleep in that area. BL testified that by this time mould had caused damage to his dresser, his bed and clothing. BL testified that he had to sleep on a foam mattress due to the mould in his bed.

BL testified that he attempted to wash some of his clothes and his dresser but the mould could not be removed and the dresser and clothing had to be thrown out. BL testified that they all started to get allergic reactions to the mould and suffered from sneezing, itching, rashes, coughing and sleeplessness for which he had to take sleeping tablets and BL sought treatment with his phycologist and Psychiatrist for his depression caused by the mould. The physical symptoms have since gone away but the depression remains.

BL gave testimony concerning his personal belongings which he lost due to the mould and testified to the following:

- The bed was a few years old and had to be replaced. BL seeks to recover \$910.28 for a new bed;
- The dresser was a year old and suffered from mould in the wood which bleaching could not remove. This was replaced for the same Ikea dresser and the tenant seeks to recover \$100.79;
- Some of BL's clothes have been replaced as the mould could not be washed off. A third of the clothing was approximately six months old and two thirds were vintage clothing collected by BL. BL seeks to recover the amount of \$1,187.27;
- BL had to replace bedding, linins and beach towels which could not be cleaned. BL seeks to recover \$357.16;
- Sporting equipment was also covered in mould such as BL's skate board pads which were approximately a year old. BL seeks to recover \$199.32.

The tenants seek to recover work that they did in the unit at the end of the tenancy to clean and repair the unit. BL testified that this work should not be the responsibility of the tenants as the move in condition inspection report indicates that the unit was not

completely clean at the start of the tenancy and the tenants repaired some holes in the walls. The tenants seek to recover the amount of \$540.00 for their cleaning and repair work.

BL testified that as he suffered health complications due to the mould spores he seeks to recover the amount of \$3,000.00.

BL seek a rent adjustment because they were evicted from the unit on November 12, 2015 and BL had to move into a place on his own which was more expensive. BL has calculated the difference between the rent he was paying and his new rent and asks that this amount of \$2,146.69 be paid in compensation.

BL testified that he suffered a loss of \$46.92 for moving costs when he vacated the rental unit and seeks to recover this from the landlord.

GM testified that at the time the water leak occurred he was away from the unit and he did not see any mould in the BL's closet or on BL's belongings. When he returned to the unit the mould issue and water leak had been rectified; however, there was still a hole in the wall between the bathroom and BL's bedroom.

BL calls his witness JW. JW testified that she was living in the unit and was there when the water leaked from the bathroom into BL's closet. Water pooled in the closet and spread into BL's room. The landlord did not repair the leak in a timely manner and mould appeared and spread in the closet and BL's bedroom. JW testified that she did see some mould on BL's belongings and carpet and that BL tried to wash some of his belongings and bleached the mould in his room. BL moved his belongings out of the bedroom.

JW testified that while she was in the unit she also suffered from dry eyes, itchy skin and bad headaches and there was also a hole in the bathroom wall which you could see into the bedroom. JW testified that she tried to stay out of the unit as much as possible.

JW agreed she did not seek medical advice from her doctor concerning her symptoms as they were only present when she was at home and cleared up when she was out of the home.

The landlord asked JW if she saw mould on the carpet and under pad. JW responded that she did not lift the carpet but it was wet and there was mould on the baseboards.

The landlord testified that BL informed him of the water leak on September 16, 2015. The landlord looked through yellow pages looking for a plumber but everyone was busy. The tenant recommended a friend and when the landlord called that friend he recommended him to someone else. The landlord testified that he eventually found a plumber who could come out on September 29, 2015 and that plumber came and did work on September 30, 2015. The plumber told the landlord and BL that once the leak was fixed the mould would die off. On October 09, 2015 the tenant contacted the landlord again regarding mould. The landlord went to the unit and looked at the problem. The landlord contacted a company to remedy the issue but they were too expensive. The landlord then used a restoration company and they came to the unit and provided an estimate on October 19, 2015. The landlord testified that he asked the tenants to organise with the restoration company when it was convenient for them to come and do the work. The tenants did not contact the company even though the restoration contactor was seen giving BL his business card. On October 23, 2015 BL called the landlord to ask when the restoration company was coming.

The landlord testified that he had paid for half the work on October 19, 2015 and the company could have started work the next day had the tenants arranged a convenient time with them. It was not until October 27, 2015 that the work was started. The drywall repair was too expensive and so the landlord's brother completed the work later after the tenants moved out on November 12, 2015.

The landlord asked BL if he can substantiate the damage to his belongings. BL responded that this damage can only be substantiated by the testimony of JW as BL

was too stressed out to take pictures at the time. BL agreed he did volunteer to deal with the man from the restoration company.

The landlord testified that he took reasonable steps to deal with the mould issue but the drywall was not repaired until after the tenants had moved out as they said they were cleaning up the unit and it was not convenient to have this work done then. The landlord testified that the remediation man said the mould was not very bad and when he tested it with his meter, the meter did not go nuts and therefore the mould was not a huge health hazard. The landlord testified that he did not see any mould on the tenant's belongings and the tenant did not show the landlord any damage to any of his belongings.

BL asked the landlord how many times he visited the unit between September and October, 2015. The landlord responded that he did not keep a record but it was at least a few times. BL asked the landlord why he thinks BL is embellishing his evidence. The landlord responded that the tenants did not go to the doctors about their symptoms and did not show any mould on their belongings to the landlord. This has all been brought up after the tenants moved out.

The landlord testified that the tenants had been served with a 10 Day Notice for unpaid rent or utilities and the tenants did not pay that rent or dispute the Notice. It was therefore the tenants who ended the tenancy through nonpayment of rent.

The tenant testified that the water leak was an emergency problem and the landlord's plumber that fixed the leak is not a mould expert

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants' application for a Monetary Order for money

owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimants have met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimants followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimants to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimants must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimants did everything possible to address the situation and to mitigate the damage or losses that were incurred.

With this test in mind I have considered the tenants' claim for compensation for damaged caused by the mould to BL's belongings. It is evident that there was a water leak that seemed through into BL's bedroom and that mould affected some areas of the closet and the bathroom connecting walls. The tenants did inform the landlord as soon as possible on September 16, 2015; however, the landlord did not engage the services of a plumber to investigate the cause of the leak until September 29, 2015. When there is a water leak this could be construed as an emergency repair and despite any additional costs for an emergency plumber I find the wait time of 13 days to engage a plumber to be unreasonable in this instance.

I am satisfied that the walls and baseboards in the BL's room suffered from some level of mould; however, there is insufficient evidence to show that this mould affected the

BL's clothing, bed, bedding, linens or dresser between September 16 and September 20 or that the extent of mould damage that occurred within these four days was so severe it could not be washed off the clothing, sporting equipment, bedding linens or dresser. The tenants' witness JW testified that she saw some mould and saw BL using bleach to clean mould in his room; however, this is insufficient evidence to prove the extent of the mould, particularly when the tenant has provided a number of photographs showing mould in the closet of his room and not of his alleged damaged belongings. There is also insufficient evidence to show BL's bed was affected by the mould that could not be removed. I must therefore find the burden of proof has not been met as set out above for compensation for BL's bed, dresser, clothing, bedding, linens, towels and sporting equipment. These sections of the tenants' claim are dismissed without leave to reapply.

With regard to the tenants' claim for compensation equivalent to a retrospective rent reduction for September and October, 2015; I am satisfied that the landlord did not act in a timely manner after he was notified on September 16, 2015 of the water leak in order to rectify the problem by engaging someone to investigate the leak, fix the source of the leak and remedy the water damage to the floor, carpet and drywall. During the period of time the problem was not rectified there was some visible mould growing on the walls and it is therefore likely that this extended into the walls between the bathroom and BL's bedroom, behind the bathtub and the flooring. I do find the tenants are entitled to some compensation due to the landlord's failure to act in a timely manner; however, the tenants seek to recover all the rent paid for September and October; the leak was not reported until September 16, 2015 and only the tenant BL was greatly affected by the leak in his room and the other legal tenant was not present during this period and the other occupant was affected to a lesser degree by the mould present in the bathroom and the hole in the bathroom wall. I therefore find the tenants are entitled to some compensation for their devalued tenancy and I award the tenants compensation of **\$300.00** for September and **\$450.00** for October, 2015. A Monetary Order has been issued pursuant to s. 67 of the *Act*.

With regard to the tenants' claim for compensation of \$540.00 for work completed in the unit; I have reviewed the move in condition inspection report and find this was completed at the start of the original tenancy and no further reports were completed with each subsequent change of tenants or renewal of the tenancy agreements. There is insufficient evidence to show the condition of the unit when these tenants signed a new tenancy agreement in May, 2015. I refer the parties to s. 32(2) and 32(3) of the *Act* which states:

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Consequently, if the tenants cleaned the unit at the end of the tenancy then I find this is a requirement under the *Act* along with any repairs to the units caused during their tenancy. If the tenants felt they were making repairs for damaged caused by previous tenants then they had the choice not to make those repairs and could have applied for dispute resolution at that time. The tenants' application for compensation for this work is therefore dismissed without leave to reapply.

With regard to the tenants' claim for compensation for health complications caused by the mould spores; the tenant BL testified that he suffered with various symptoms such as sneezing, itching, rashes coughing and sleeplessness. BL also testified he suffered from depression caused from the mould. The occupant JW testified that she suffered from dry eyes, itchy skin and headaches; however, neither of these parties have provided any medical evidence as to the cause of these issues and although I am not a medical person I am unsure that depression would be a symptom of mould spores. I must therefore find there is insufficient definitive proof that the tenant or the occupant of the unit suffered health conditions solely caused by the mould and not due to another

source or a previous health condition. The tenants' claim to recover \$3,000.00 is therefore dismissed without leave to reapply.

With regard to the BL's claim for compensation of \$2,146.69 as a rent adjustment; BL testified that the landlord evicted him and he had to rent alternative accommodation at a higher rent and that his claim is for the difference between the rent for this unit and his new unit. The previous hearing held on March 01, 2016 was concerning a 10 Day Notice issued to the tenants for nonpayment of rent. At that hearing the tenants had already vacated the unit and it was shown that the tenants did not dispute the Notice and that there was outstanding rent. There is no provision under the *Act* for tenants to be awarded compensation for any difference in their rent once a tenancy has been legally ended. This section of the tenants' application is dismissed without leave to reapply.

With regard to the tenant BL's claim for moving costs of \$46.92; there is no provision under the *Act* for moving costs to be awarded to a tenant when the tenancy has been legally ended. This section of the tenants' claim is dismissed without leave to reapply.

As the tenants claim has some merit I find the tenants are entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$850.00**. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The Monetary Order issued will be in the name of the tenants BL and GM as the Occupant named on this application is not a legal tenant of the rental unit. It is up to BL and GM to apportion any payment as required.

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: April 26, 2016

Residential Tenancy Branch