



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding URBAN PROPERTIES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with an application by the tenants seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to Section 67 of the Act and to recover the cost of filing this application pursuant to Section 72 of the Act. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?

Are the tenants entitled to the recovery of the filing fee?

Background and Evidence

The tenants gave the following testimony:

The tenancy began on or about August 15, 2013 and ended on September 30, 2015.

Rent in the amount of \$1306.00 is payable in advance on the first day of each month.

At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$637.50. The tenants stated that on May 7, 2015 they discovered a mold problem in their bedroom and living room and immediately sent an email to the landlord.

The tenants stated that they made at least five calls or emails to the landlords' about this issue after that. The tenants stated that the landlords had several different companies come in and inspect the unit. The tenants stated that the landlords had the moldy sections of the walls removed on August 20, 2015 and left open until they moved out on September 30, 2015. The tenants stated that they are seeking \$1622.50 in compensation for having to live with the mold and repairs for an extended period.

The landlord gave the following testimony:

The landlord stated that when the tenants first advised him of the mold issue it was already at an advanced stage. The landlord stated that he was obligated to have his agent go through the strata council to receive approval of any work. The landlord stated the strata council had their own inspectors review the matter and found that there was no exterior ingress of water or exterior envelope problem. The strata council's inspector found that the mold was as a result of the "interior living environment and habits" of the tenants and refused to cover any costs associated with this repair.

The landlord stated that the suite had an extremely high humidity level due to the tenants not opening windows to allow fresh air, running fans when cooking or showering and not having a sufficient level of heat in the unit causing moisture to build around windows and thus moving onto the walls. The landlord stated that he took it upon himself to have the repairs done and hired his own company. The landlord stated that the tenants should have advised him sooner of this issue as it had reached such an advanced state by the time he was informed that resulted in higher costs for him to repair. The landlord stated that their tenancy agreement clearly states that the tenants are responsible for advising the landlord of any damage or unsafe condition; the landlords stated that the tenants didn't do that in a timely fashion.

The landlord stated that the tenants gave notice that they would be moving out shortly after the moldy drywall was removed and was left open to have the unit properly dry out and to be completed when the suite was empty.

Analysis

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant has failed to satisfy all four grounds as required above, specifically # 2 and #4. The tenant has not shown that the landlord was negligent or reckless in his actions that resulted in the mold to occur. The landlord conceded that there were some unavoidable delays due to being part of a strata building but that is something that can be reasonably expected in a strata property. In addition, once the landlord was informed that the strata would not cover the costs, he took the initiative to immediately hire his own restoration company to remediate the problem.

In the tenants own e-mail of May 7, 2015; the first time the tenant informed the landlord, the attached photos depicted the scope of the mold at an advanced state that was prevalent in the bedroom, living room, carpets and windows. The landlord stated that in the tenants own photos the amount of mold around the base board heaters clearly shows that they were not providing sufficient heat when needed causing excess humidity and moisture in the unit. I concur with the landlords' observation. The tenant did not mitigate the loss or damage claimed by informing the landlord sooner. The amount of mold and the amount of the apartment that was affected by it clearly shows this was a long standing problem that the tenant did not report. The tenants own

inactions border on negligence and recklessness. The tenants failed in their duty to mitigate the damage.

For the above reasons and on a balance of probabilities I find that I must dismiss the tenants application in its entirety.

Conclusion

The tenants' application is dismissed in its entirety.

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 02, 2016

Residential Tenancy Branch