



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LANDLORD: MND, MNSD, MNDC, FF
TENANT: MNDC, FF, O

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenants.

The Landlords filed seeking a monetary order for compensation for damage to the unit site or property, for damage or loss under the Act, the regulations or the tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Tenants filed seeking a monetary order for compensation for damage or loss under the Act, the regulations or the tenancy agreement, to recover the filing fee for this proceeding and for other considerations.

Service of the hearing documents by the Landlords to the Tenants were done by
personal delivery on January 27, 2016, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenants to the Landlords were done by
registered mail on June 17, 2016 in accordance with section 89 of the Act.

The Tenants and the Landlords confirmed that they had received the other party's hearing packages.

Issues to be Decided

Landlord:

1. Are there damages to the unit, site or property and if so how much?
2. Are the Landlords entitled to compensation for the damages and if so how much?
3. Are there other damages or losses to the Landlords and if so how much?
4. Are the Landlords entitled to compensation for damage or loss and if so how much?
5. Are the Landlords entitled to retain the Tenants' security deposit?

Tenant:

1. Are there damages or losses to the Tenants and if so how much?
2. Are the Tenants entitled to compensation for loss or damage and if so how much?

Background and Evidence

This tenancy started on November 1, 2013 as 24 month fixed term tenancy with an expiry date of October 31, 2015. The tenancy continued after October 31, 2015 on a month to month basis. Rent was \$1,600.00 per month payable on the 1st day of each month. The Tenants paid a security deposit of \$800.00 on September 3, 2013. The Landlords returned the security deposit to the Tenants on January 29, 2016 in the amount of \$800.00. The tenancy ended on January 27, 2016. No move in condition inspection report was completed. A move out inspection report was completed and signed on January 27, 2016. The Tenants indicated on the move out report that they disagreed with the report and the Landlords' comments. The move out condition inspection report says the Tenants are responsible for water damage to the rental unit.

The Landlord said the Tenants contacted the Landlord and the building manager J.B. on December 3, 2015 that there were water marks on the ceiling and walls of their rental unit. The Landlord continued to say the Building Manager J.B. went to the rental unit and found the rental unit had high humidity and the ceiling and walls were wet around the windows and mold was present on the walls. The Landlords continued to say the male Landlord inspected the rental unit on December 4, 2015 and found extensive moisture and mold on the walls, ceiling and windows. The Landlords said they had to hire a restoration company to clean and repair the damage caused by the high humidity in the rental unit. The Landlords said they paid the restoration company for the repairs in the amount of \$10,923.45. The Landlords continued to say they believe the Tenants caused the high humidity in the rental unit by turning off the exhaust fan in the rental unit. The male Landlord said this building was built in 2009 and the building is a wrapped so it is an air tight construction which requires the units in the building to run an exhaust fan periodically to control the humidity in the units. The fan in the Landlords' rental unit is on a timer and runs intermittently to adjust the humidity in the unit. As well there is an on/ off switch located beside the timer located in a closet. The male Landlord said the Tenants must have turned the on/off switch off sometime between September, 2015 and December, 2015. He continued to say when the cold weather started in November and December the rental unit could not vent the humidity in the unit so moisture built up to the point of causing the walls and ceiling to be wet and the window area to mold. The male Landlord said the Tenants were told at the start of the tenancy to keep the exhaust fan running to control the humidity in the unit. The Landlords said the Tenants must have turned the exhaust fan off and this caused high humidity in the unit which damaged the walls and ceiling. As a result the Landlord said the Tenants caused the water damage to the unit and now the Landlords are requesting compensation from the Tenants for the cost of repairs to the rental unit. The Landlords said they are requesting compensation of \$10,923.45, the invoice amount from the restoration company, plus the \$100.00 filing fee.

The Tenants opened their remarks by saying they disagree with the Landlords application and they have filed an application for compensation from the Landlords. The Tenants said their application is for moving costs and associated moving and living expenses because of the repair work to the rental unit. The compensation the Tenants are requesting for their move is in the amount of \$6,562.13, they are also requesting aggravated damages in the amount of \$6,800.00 and the filing fee of \$100.00.

The Tenants said the aggravated damage claim is because the Landlords said derogatory statements about them in emails to the Building Manager and the Restoration Company. The male Tenant said this damaged their reputation.

The Landlord said he was just stating facts about the condition of the rental unit with regard to the humidity issue and the remarks were not derogatory.

The Tenants continued to say they gave the Landlords a letter on December 28, 2015 giving the Landlords notice that they were moving out on January 31, 2016. The Tenants said the Landlords followed this by issuing a 1 Month Notice to End Tenancy for cause on December 30, 2015. The Tenants said they did not dispute the Notice to End Tenancy as they had already given their move out notice on December 28, 2015 to the Landlord with their forwarding address.

The Tenants continued to say that they were not given an orientation to the rental unit as required by the building management. The orientation is to be done by the property manager or the Landlord so the Tenants are aware of the building information. The information is important so that the occupants know the importance of the exhaust fan, how to operate it as well as other information about the building. The male Tenant said because they were not given the orientation they had no idea of the importance of the exhaust fan or that the building was air tight. Further the male Tenant said they did not turn the exhaust fan off. They believe the fan may have been turned off in June, 2014 during some construction that took place in the building. After the construction the male Tenant said they did not know the fan was off or that it was important. The Tenants continued to say that in the first year of the tenancy 2013 the unit was good and there was little to no moisture issues. The female Tenant said in the second year of the tenancy in 2014 during the winter they had some moisture and mold issues but they did not think it was out of the ordinary. The Tenants continued to say in the third year starting in December, 2015 the moisture issue happened very fast. The female Tenant said she had retired and was cooking and baking at home which may have contributed to the moisture issue. The male Tenant said the heat pump for the unit was not working correctly as well. The male Tenant said the heat pump was not heating but it was circulating air. The Tenants said they believe the heat pump not working correctly is part of the cause of the moisture build up. The male Tenant said the Landlord did not maintain the heat pump and as a result the unit was cold and uncomfortable during the winters.

The Landlord called a witness the building manager J.B. The witness J.B. said that it is a building management practice to give each occupant of the building an orientation to the building prior to providing keys. The witness J. B. said this is to provide information about the buildings operations and other information about living in the building. The witness J.B said he has no recollection of giving the Tenants an orientation to the building but maybe his assistant talked to them at the start of the tenancy.

The Tenants said they were not given an orientation but the building manger's assistant did show them to the rental unit. As well the Tenants said they found a Residents Handbook in the unit and the handbook did not contain any information on maintaining or handling humidity in the building. Further the Tenant said they picked up a new copy of the Resident Handbook before leaving the rental unit and it now contains a section on humidity. The Tenant said he believes it was added because of the moisture problems in the building.

The Landlord said he provided the Tenants with the owner's manual for the building and it has information about controlling humidity in the units.

The Tenants said the owner's manual is 2 to 3 inches thick and it was unreasonable to think a tenant would read a manual provided for an owner. The Tenant said they had and read the Resident Handbook that was in the unit at the start of the tenancy.

The witness J.B. continued to say he would be surprised if the Tenants handbook did not contain the humidity section unless the Tenants received a draft copy of the handbook instead of an updated handbook. The Tenants' Resident Handbook was check with the current Resident Handbook and the books were different. The Resident Handbook the Tenants got at the start of the tenancy has no section on humidity in it.

The witness J.B. continued to say he received a message from the Tenants on December 3, 2015 and the witness J.B. went to the Tenants rental unit to see what the problem was. The witness J.B. said the atmosphere in the unit was close to 100% humidity and the exhaust fan was turned off. The witness J.B. said he saw moisture on the walls and ceiling and mold around the windows. The witness J.B. said the amount of mold indicated to him that the problem had accumulated over time maybe a month or two.

The Tenant submitted a copy of an email to the Landlord dated December 3, 2015 that the Witness J.B. (the property manager) had been in the unit and the fans were turned on to reduce the humidity.

The Witness J. B. continued to say he believed the high humidity was caused by the exhaust fan being turned off and increased cooking in the unit which added more moisture to the air which was not exhausted.

Further the Witness J.B. said he does not believe the defective heat pump had any impact on the humidity in the unit.

The Tenants asked the Witness if he thought the Tenants were the type of people that would know about humidity and how to work exhaust systems. The Witness J.B. said he did not know but any reasonable occupants would know there was a problem when the humidity was as high as it was in the rental unit and there was mold in the unit.

The Tenants said the high humidity happened very quickly in December, 2015. The Tenants continued to say they thought the humidity and mold was not uncommon and they thought they would just clean this mold up as they had previously done.

The Tenants said they were unable to live in the unit because the restoration company told them they had to move out while the repairs were happening. As a result of being moved out of their rental unit the Tenants said they have incurred living expenses. The Tenants are claiming the unit was uninhabitable from December 7, 2016 to the end of the tenancy January 27, 2016. The Landlord submitted the restoration company's invoice which indicates the repairs were completed December 14, 2015. The Tenants have submitted receipts for alternative accommodations and expenses for the time period while the repairs were being done to the rental unit in December, 2015 in the amount of \$2,225.57.

Further the Tenants application is requesting reimbursement for mold testing in the amount of \$61.95, courier services of \$29.65, moving cost of \$1,007.95, utilities reimbursement in the amount of \$250.59, dry cleaning and mold removal of \$199.48 and a rent reimbursement for 54 days in the amount of \$2,786.94.

In closing the Tenants said they are not devious people, they did not turn the fan off, the Landlord did not maintain the heat pump, no instructions were given to them on move in and no move in inspection was completed. Further the female Tenant said the first year there was little to no moisture in the unit, the second year there was some humidity and mold but they thought it was normal and the third year the moisture and mold happened very quickly. The male Tenant said they believe the Landlords are responsible for the humidity issues as they were not orientated and the Landlords did not maintain the heat pump as required.

The Landlord said in closing that the exhaust fan was turned off and that is the reason the humidity caused damage in the rental unit. The Landlord said the only reasonable explanation is that the Tenants turned the fan off. Further the Landlord said the heat pump is not an issue as it does not affect the humidity in the unit. The Landlord said the Tenants did not maintain the unit correctly and therefore they are responsible for the damages.

Analysis

Tenancies require communication between the parties. When communication is not clear then issues and problems arise. It is apparent from the testimonies of the witness (the building manager), the Tenants and the Landlords that the Tenants' move in was not handled in an effective manner. Consequently important information about the building and the rental unit were not communicated to the Tenants. The Building Manager had no recollection of giving the Tenants an orientation to the building. The Tenants said they did not have an orientation to the building nor was a move in condition inspection report completed. The Landlord confirmed that they did not do a move in condition inspection report and no formal orientation was given to the Tenants. The Landlords said the owner's manual was given to the Tenants which had information about humidity and the exhaust fan operation. As well the Landlord said he told the Tenants to run the fan. The Tenants say the manual was 2 to 3 inches thick and it was unreasonable to expect a tenant to read it. Further the Tenant said there were no instructions about the fan or humidity in the Resident Hand Book.

As a result it is possible that the Tenants had no idea of the importance of the exhaust fan and how to operate it. Further I also accept the Building Managers J.B. testimony that any reasonable occupant should advise the Landlord or Building Manager if there is a humidity build up and mold in a rental unit. Given the testimony of all the parties it is apparent that a lack of clear communication happened between the Landlord, the Tenants and the Building Manager. As a result the exhaust fan was turned off and the Tenants did not realize the importance of the fan not operating which resulted in and the humidity in the unit rising to the point that it damaged the unit.

Section 23 of the Act says: Condition inspection: start of tenancy or new pet

- 23** (1) The landlord and tenant together **must** inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

The importance a formal move in inspection is to establish the condition of a rental unit and to inform tenants about the rental unit. I accept the Tenants testimony which is corroborated by the Landlords and Building Manager's testimony that no formal move in orientation was done with the Tenants.

Section 32 of the Act says: Landlord and tenant obligations to repair and maintain

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.

(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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find that all three parties the Landlords, the Tenants and the Building Manager are responsible for the damage to the rental unit caused by high humidity because the exhaust fan was not operating. The Building Manager said it is the policy of the building management to give a formal orientation to all occupants. I accept from the testimony of the parties an orientation was not completed with the Tenants. The Building Manager is responsible to carry out his duties and if an orientation is one of the Building Managers duties then in this case the Building Manager failed in his duty to orientate a new occupant.

Further the Landlords are ultimately responsible to complete a formal move in condition inspection and orientate new Tenants and to inform tenants about the rental unit and the building. I find the Landlord did not complete a move in condition inspection at the start of the tenancy and no orientation was given to the Tenants. Consequently the Landlords did not meet their responsibility as Landlords when the Tenants moved into the rental unit.

Further the Tenants have a responsibility to report any activity to the Landlord that could damage a rental unit. The Tenants said they noticed the humidity and mold increase in 2014 and then again in 2015. The Tenants were responsible to report the humidity and mold issues to the Landlord or Building Manager as soon as they were aware of it. The Tenants did not meet their responsibility to maintain the rental unit to an acceptable standard by not reporting the high humidity and mold in 2014.

Consequently I find the Landlords and Tenants are equally responsible for the damage to the rental unit. Therefore I find the Landlord must bear half the cost of the repairs in the amount of \$10,923.45 divided in half in the amount of \$5,461.73. As well I find the Tenants are responsible for the equal amount of the repairs in the amount of \$5,461.72. I award the Landlord \$5,461.72 as compensation for damages to the rental unit as a result of the Tenants not reporting humidity and mold issues as they appeared in 2014 and 2015.

Further the Tenants have applied for compensation for the following:

1. Aggravated damages	\$5,000.00
2. Lack of heat due to faulty heat pump	\$1,800.00
3. Alternative accommodation from December 4 to 14	\$2,225.57
4. Mold testing	\$ 61.95
5. Postal costs	\$ 29.65
6. Moving costs	\$1,007.95
7. Reimbursement of Utilities	\$ 250.59
8. Cleaning mold	\$ 199.48
9. Rent reimbursement 54 days Dec. 4 to Jan 27	<u>\$2,786.94</u>
Total	\$13,362.13

With regard to the aggravated damages I have reviewed the Landlord's emails and I have not found any remarks that meet the level of seriousness to merit a compensation claim. Consequently, I dismiss the Tenants' request for aggravated damages for \$5,000.00.

As the Tenants did not advise the Landlord of the heat pumps malfunction until December 2015; I find it is unclear whether the heat pump malfunction caused the Tenants any real damage as the Tenants did not think it was important enough to report to the Landlord until December, 2015. Consequently, I dismiss the Tenants' claim for compensation for the malfunction of the heat pump in the amount of \$1,800.00 due to not reporting the issue to the Landlord in a timely manner.

With regard to the Tenants claim of \$2,225.57 for the cost of alternative accommodations and meals in December, 2015 while the repairs to the unit were completed. I find the Tenants have established ground for this claim as the Restoration Company requested the Tenants to move out while the work was being done. I award the Tenants \$2,225.57.

As well I accept the Tenants incurred costs and provided a receipt for the mold testing therefore I award the Tenants \$61.95 for mold testing.

Postal costs for the hearing are not an eligible claim under the Act therefore I dismiss the Tenants claim for \$29.65 for postal costs.

As the Tenants gave notice on December 28, 2015 to move out of the unit, I find the tenancy ended by the Tenants choice therefore the Landlord is not responsible for any of the Tenants' moving costs. I dismiss the Tenants claim for moving costs in the amount of \$1,007.95.

As the Tenants had control of the rental unit until the end of January, 2016 therefore the Tenants are responsible for the utilities until that date. I dismiss the Tenants claim for reimbursement of utilities in the amount of \$250.59.

With regard to the Tenants' dry cleaning claim for mold I accept there was mold and this had to be done; therefore the Tenants have established grounds to be awarded \$199.48 for dry cleaning their belongings.

Further the Tenants have requested rent reimbursement from December 4, 2015 to January 27, 2016 in the amount of \$2,786.94. I found no evidence that said the rental unit was uninhabitable after the restoration work was completed therefore as I have already awarded alternative compensation for December 4, 2015 to December 14, 2015 I find the Tenants have not established grounds for a rent reimbursement of \$2,786.94. I dismiss the Tenants claim for rent reimbursement of \$2,786.94.

As both the Landlords and Tenants have only been partially successful in this matter I order both the Landlords and the Tenants to bear the cost of the filing fee of \$100.00 that each have already paid.

As both parties were partially successful I have off set the two claims as below and issued the Landlord with the resulting monetary award:

Landlords' award:		\$5,461.72
Tenants' award:		
Alternative accommodation	\$2,225.57	
Mold Testing	\$ 61.95	
Dry cleaning	<u>\$ 199.48</u>	
Total		<u>\$2,487.00</u>
Amount Due		<u>\$2,974.72</u>

Conclusion

A Monetary Order in the amount of \$2,974.72 has been issued to the Landlords. A copy of the Order must be served on the Tenants: the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: August 2, 2016

Residential Tenancy Branch

