



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenants' application: MNDC, MNSD, FF

Landlord's application: MND, FF

Introduction

This was a hearing with respect to applications filed by the tenants and by the landlord. The tenants applied for a monetary award and the return of their security deposit. The landlord applied for a monetary award. The hearing was conducted by conference call. The tenants called in and participated in the hearing. The landlord called in approximately 10 minutes after the start of the hearing. He said that he experienced difficulty accessing the conference call. The tenants filed their application on December 21, 2015. In their application claimed a monetary award and the return of their security deposit. The landlord's application was filed on March 30, 2016. He claimed a monetary award for compensation for damage to the rental unit said to have been caused by the tenants.

Issue(s) to be Decided

Are the tenants entitled to a monetary award and if so, in what amount?

Are the tenants entitled to the return of all or part of their security deposit?

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The rental unit is a house in Chilliwack. The tenancy began in September, 2014. The tenancy agreement is for a term ending August 31, 2017, with a monthly rent of \$980.00. The tenants paid a security deposit of \$490.00 at the start of the tenancy.

In their application for dispute resolution filed on December 21, 2015, the tenants initially claimed a monetary award of \$32,702.25. The lowered the claimed amount to \$24,702.25 to bring it within the jurisdictional limits of the Residential Tenancy Branch. The sole remedies sought by the tenants were the payment of a monetary award and the return of their security deposit. Among other monetary claims, the tenants claimed the refund of all rent paid from September 1, 2014 to December 31, 2015. The claims set out in a monetary order worksheet are as follows:

• Refund for rent paid	fraud and deception by landlord:	\$15,680
• security deposit		\$490.00
• first & last months' rent at new residence:		\$3,000.00
• Attic inspection invoice:		\$561.75
• Crawlspace inspection invoice:		\$262.50
• Work missed due to illness:		\$2,208.00
• Emotional distress and fraud of landlord		\$2,000.00
		(reduced from \$10,000.00)

Total monetary claim: \$24,702.25

The tenant testified that he viewed the house in July, 2014. He said that the house needed work, but he agreed to perform some work to fix the house. He signed a tenancy agreement with the landlord on August 1, 2014. The tenant testified that the landlord paid for insulation that the tenant installed in the attic of the rental property. The tenant said that beginning in February, 2015 he exchanged e-mails with the landlord about leaks in the attic. The landlord asked the tenant if they knew of a qualified roofer, and if so requested that they ask him to assess and make repairs. The landlord said if the tenants did not have a recommendation the landlord would investigate and make the contact. On February 18, 2015 the tenants reported by e-mail that they intended to remove wet insulation and clear the area to do the work. The tenant said the problem did not appear to have been going on for long and there were no signs of black mold or anything of the sort.

The parties continued to exchange communications about engaging a roofer. The tenant recommended a roofer to the landlord. The landlord requested that the tenant obtain a quote from the roofer. On March 6, 2015 the tenant sent an e-mail referring to attic problems. In September, 2015 there was a further exchange of e-mails. The tenant asked if the landlord was going to deal with the "attic issue" soon. He complained about the cost to heat the house during the winter and referred to a condensation issue and mouldy insulation that he said was contributing to a health issue.

The landlord hired a contractor to inspect the attic and roof in order to determine what repairs might be needed. In an e-mail dated October 6, 2015 he reported as follows:

1. The house is pretty old and dilapidated.
2. The area that is of major concern is a major concern. There is significant black mold on the falling down plastic and insulation. The cause of the excessive condensation is that there is no ventilation over and above the warm area. Not only that, but there is no space for ventilation when the insulation is between the rafters. Consequently, that space is a health hazard at present and not suitable for human or animal habitation, due to the presence of black mold.

Recommendation: Have the upstairs area remediated of the mold by a licensed firm and legally dispose of the contaminated materials. Following that, the “attic” floor area (ceiling area of the main floor) should be properly insulated and the space below the roof, treated as attic space.

The contractor said that he advised the tenants not to enter the area without a good ventilator mask and that he would not engage in the work.

The tenants asked what the landlord proposed to do in response to the report. He replied as follows:

I plan to suit up with protective equipment and deal with it, removing necessary insulation and poly, re-insulating as required and making the attic a totally non heated unassessable space. And ventilated.

The replacement of the upstairs door with solid core, along with weatherstripping, will be completed by a contractor.

The tenant responded to the landlord. They said the work must be done by a certified professional. The tenants listed the names of several companies said to be qualified. The tenants also said the landlord must pay for alternate accommodation if it was necessary for the tenants to vacate while the work was done. The tenants said that the house and property was rented to the tenants in full and “as is”. They said this meant that if the attic was closed off, the tenants would have to be compensated for the loss of use of the attic because although it was only rented as and only good for storage, the tenants were using it for storing a great deal of their belongings, including camping gear and extra furniture. The tenants mentioned a further option, namely: that the parties sign a mutual agreement to end tenancy and the landlord provide them with moving costs so they could find a more suitable location.

The landlord responded saying that he intended to investigate to assess the scope of the work and noted that it was not necessary to hire a certified professional to remove insignificant amounts of mold. He said when the attic was remediated the tenants could use it as unheated storage, but if they intended to insist that the landlord use one of their stated companies, they could consider finding another tenancy and he would be prepared to release the tenants from the fixed term tenancy agreement.

In an October 8, 2015 e-mail message to the landlord the tenants said that they considered ending the tenancy to be their “last option”, but they also said that if the landlord proceeded without bringing in a qualified professional they would be forced to break their tenancy and file a claim for costs incurred.

The tenants then hired a mold inspector to examine the rental unit and take samples. The tenant obtained a report dated October 20, 2015. According to the inspector he noticed water

staining and mold growth in the attic with the presence of mold on some sheathing and lumber. The inspector reported that there were signs of a previous marijuana grow-operation in the attic. The mold tests identified elevated counts for two mold species. The inspector stated the opinion that the mold originated in the attic and was due to a lack of ventilation and airflow. The inspector recommended removal of the contaminated sheathing or treatment, including a treatment with a chemical inhibitor.

The tenant also obtained a mold inspection of the crawl space in the rental unit. A report dated December 15, 2015 identified mold in the crawlspace of the rental unit. The mold inspector also identified what were referred to structural concerns with respect to wooden supports in the crawlspace. The tenant contended that there is movement in the floor and the joists could fail. The landlord said there has always been some movement, but he does not believe it is structurally unsound. The landlord said he is prepared to investigate the problem.

The tenant and the landlord exchanged correspondence; the tenant demanded professional remediation and other remedies, including rental of a storage container and compensation for inspection reports.

The tenant filed a Residential Tenancy Branch application for dispute resolution on December 8, 2015. He requested orders directing the landlord to make repairs, including emergency repairs, an order that the landlord comply with the *Residential Tenancy Act* and a monetary award including reimbursement for the cost of a mold inspection and "back rent". The matter was set for hearing on January 29, 2016 however the tenant later cancelled the application. He filed the current application on December 21, 2015, but in the application before me the tenant has not requested any remedy, apart from a monetary award. The tenant also retained a lawyer who wrote several demand letters to the landlord on his behalf. In a letter dated January 14, 2016, the tenants' lawyer proposed a settlement whereby the tenants would be released from the tenancy agreement and the landlord would pay them a sum exceeding \$23,000.00.

In his written submissions in support of his application the tenant said that he was no longer seeking to fulfill his earlier demands, including repairs. He accused the landlord of fraud and deception and said that he was claiming the following:

1. Monetary Payment for refund of all rental payments starting from the first payment summing \$15,680.00 CAD (This amount is subject to increase based on additional rent payments made while this matter goes unresolved.)
2. Monetary Payment for refund of our Damage Deposit summing \$490 CAD
3. Monetary Payment for the first and last months rent for a new residence summing \$3,000 CAD
4. Monetary Payment for moving expenses summing \$500 CAD
5. Monetary Payment for time missed from work due to illness \$2,208 CAD
6. Monetary Payment for emotional distress and fraud summing \$10,000 CAD

7. Monetary Payment for reimbursement of Attic Inspection Fees paid to (name of company) summing \$561.75 CAD
8. Monetary Payment for reimbursement of Crawlspace Inspection Fees paid to (name of company) summing \$262.50 CAD
9. Release from our Residential Tenancy Agreement.
10. Submit to a City of Chilliwack Inspector to inspect the property and building, seeing that any and all repairs are made correctly before the building is ever rented to another person. (reproduced as written)

The tenant said the total sum of his monetary demands equals \$32,702.25 CAD. He reduced his claim to the sum of \$24,702.25 when he filed it in order to bring it within the jurisdictional limits of the Residential Tenancy Branch.

The tenant stated his view that the building needs to be condemned and that the landlord is a criminal. He requested the Residential Tenancy Branch solve the problem without specifying a solution apart from the granting of a large monetary award. The tenant said at the hearing that he has no intentions of moving before the end of the term of the tenancy, despite his contention that he considers that his life and the lives of his family members are in jeopardy so long as they reside in the rental unit.

On March 30, 2016 the landlord submitted his own application for dispute resolution making a claim against the tenants in the amount of \$25,000.00 for damage to the rental unit.

The landlord said in response to the tenants claims that the rental unit, a house in Chilliwack is "an old timer", that is an old and run down property. He said that the previous tenants left a mess with debris and garbage throughout the house and in the crawlspace and attic. There was a flea and rat infestation throughout the house. He hired a pest control company to treat the infestation. The female tenant was an employee of the company. The landlord said the tenants became interested in renting the house and the male tenant performed a thorough inspection of the house. Although the house was in rough condition the tenants agreed to rent the house due to the fact that it had four bedrooms and property for gardening. The inexpensive rent reflected the condition of the house and the work that was needed. The landlord said that the landlord and the tenants agreed that the landlord would pay for new carpet, fix windows and fix appliances, including the washer and the tenant would install the carpet, paint and do the repairs and upgrades that the tenants considered necessary for their comfort. The landlord said that he received a number of calls from the tenants to fix relatively minor problems.

The landlord said that the tenants' complaints of a roof leak were unfounded and the moisture was due to condensation. The landlord blamed the tenants for the problem; he attributed it to the fact that they kept the door to the attic open and thereby allowed moist warm air to enter the cold, unventilated attic space. The landlord referred to his communications with the tenant. He said he made arrangements to deal with the problem and assembled a crew with the

appropriate equipment and materials to treat and double seal the attic and to ensure that no contamination would be transferred into the occupied living space. The landlord said that the tenants refused him entry, even for the purpose of inspecting to determine if the scope of work was within the landlord's capabilities. The landlord submitted that he has construction and building maintenance expertise and is also a professional electrician. He said the work is within his capabilities and at the very least the tenant should not have prevented him from assessing the situation.

The landlord proposed closing off the attic space and he noted that the tenant agreed that this would be the cheapest most effective way to deal with the problem once and for all. He also offered in writing on several occasions to release the tenants from the tenancy agreement without penalty.

The landlord testified that he has no knowledge of any marijuana grow operation in the rental unit. The landlord said he personally removed items from the attic. He adamantly denied the tenant's accusations of dishonesty. The landlord said that he proposed remedial work to the house by removing an old electric hot water tank, closing off and sealing the attic and proposing that if there was not sufficient storage space, to pay for external storage for the tenant in a small storage facility. The landlord submitted that the tenants have been unreasonable and uncooperative in pursuit of an unfounded claim for remuneration.

The landlord's monetary claim is based on his assertion that the tenants caused the attic problem. He claimed a sum of \$23,000.00 as an estimate for repairs. He claimed additional amounts for emotional distress by constant haranguing and severe lack of sleep.

During the hearing the parties were provided with an opportunity to discuss a settlement of the matters in dispute in this proceeding. No agreement was reached between the parties.

Analysis

The tenants have advanced a purely monetary claim for compensation based on what they say are the unliveable conditions of the rental unit and for what they claim is fraud on the part of the landlord; this includes a claim for the refund of the entire amount of rent paid over the course of the tenancy. They commenced a claim seeking repair orders as well as a monetary award, but later abandoned it in favour of this claim.

The tenants' accusation of fraud appears to be based on the tenant's assertion that the landlord had knowledge of problems with the rental unit, including its alleged use as a marijuana grow-op and of claimed structural defects and that he concealed or consciously deceived the tenants about these matters. The landlord testified forthrightly that he cleaned up after the departing tenants who left the place in a mess. I accept his testimony that he was not aware of any marijuana grow operation in the rental property and he did not see signs of such activity. I note that the tenants make an extensive inspection of the rental unit and they were well aware of its

dilapidated condition when they agreed to rent the unit and to perform repairs and upgrades. I find that the tenants have not proved on a balance of probabilities that the landlord engaged in any fraud or misrepresentation to induce the tenants to rent the unit.

The tenants have claimed amounts for loss of work due to illness said to be related to the condition of the rental unit and the presence of mold. The tenants have not provided medical evidence to support such a claim and I find they have failed to prove on a balance of probabilities that they suffered illness that can be attributed to some fault or neglect on the part of the landlord.

The tenants' claim for refund of all rent paid under the tenancy agreement since its inception could be construed as a claim for loss of quiet enjoyment, but the claim is tantamount to an assertion that the tenancy has been entirely valueless and such a claim must also be subject to the tenants' obligation to mitigate their damages.

The *Residential Tenancy Act* provides by section 7 as follows:

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.

(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.

The tenants who are claiming compensation have an obligation, both at common law and as a codified statutory requirement, to do whatever is reasonable to minimize their damage or loss. I find that this obligation includes making a timely application for a repair order in appropriate circumstances and in rare circumstances may include electing to move from the rental unit and claim damages. Instead of taking appropriate steps to compel the landlord to make repairs including seeking a ruling as to whether or not the requested repairs need to be performed by a specific type of professional, rather than the landlord, the tenants have simply declared a stalemate while professing their intention to remain in the rental unit until the end of the term and continuing to claim an accruing amount for damages. The landlord proposed a plan to remediate the problems in the attic. The tenants rejected the proposal. The landlord declared that the tenants could move without penalty under the lease, which has a term ending August 31, 2017. The tenants responded that they were not interested in moving, although several of their demand letters requested release from the tenancy agreement and payment of amounts

including moving expenses and compensation, including reimbursement of rent paid for alternative accommodation.

I find that the tenants have failed to take reasonable steps to mitigate their damages, by refusing on the one hand to allow the landlord to perform work to remediate what they claim to be the problems with the rental unit and second, by failing to pursue an application for an order directing the landlord to perform repairs. Finally, I find that the tenants have failed to mitigate their damages by searching for other suitable accommodation and then claiming damages from the landlord for moving costs and other potential loss, such as a rent differential.

The tenants have incurred costs to obtain expert reports, including a report from a mold specialist. Had the tenants applied for a repair order and relied on the reports as the foundation for the claim I would regard the cost of obtaining the reports as a legitimate and reimbursable expense. Because the mold inspection report provided information useful in formulating the landlord's plans for remediation, I allow the claim for reimbursement of attic inspection fees in the amount of \$561.75. I do not allow the claim for a crawlspace inspection, based on the tenants' choice not to pursue any repair orders.

Based on my findings that the tenants have failed to prove that there was fraudulent misrepresentation or deception on the part of the landlord and based on my finding that the tenants have not taken all reasonable steps to minimize their damage or loss, I dismiss the remainder of the tenant's monetary claims without leave to reapply, save and except for their claim for moving expenses and for the return of their security deposit; these claims are dismissed with leave to reapply. This is a continuing tenancy and the matter of the security deposit must be addressed when the tenancy is ended in accordance with the *Residential Tenancy Act*.

It remains open to the parties to reach an agreement concerning repairs to be made to the rental unit or to agree that the tenancy will end. The tenants are at liberty to reapply for repair orders and for compensation in the event that repairs are ordered by the Residential Tenancy Branch but not undertaken by the landlord in accordance with such an order.

With respect to the landlord's claims, they are retaliatory in nature. I find that the landlord has not established that the tenants are responsible for damage to the attic or for the cost of remediation. He did not submit estimates in any event. His claims for emotional distress are in the nature of a claim by the landlord for loss of quiet enjoyment; this is not a remedy available to a landlord under the *Residential Tenancy Act*. The landlord's claims for a monetary award are dismissed without leave to reapply.

Conclusion

The tenants' claim for a monetary award has been allowed in the amount of \$561.75. The tenants have been largely unsuccessful on their application and I decline to award a filing fee. The landlord's application has been 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: September 02, 2016

Residential Tenancy Branch

