



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MNDC, FF

Tenant's application: MNDC, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The landlord and the tenant each applied for a monetary award. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing. The landlord and the tenant exchanged documentary evidence and photographs before the hearing.

Issue(s) to be Decided

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

Is the tenant entitled to a monetary award for inconvenience, time loss and compensation for ill health and if so, in what amount?

Background and Evidence

The rental unit is a strata title apartment in Vancouver. The tenancy began in September, 2015. The rent was \$1,250.00. The tenant paid a security deposit of \$625.00 at the start of the tenancy. The tenant moved out of the rental unit in September, 2016.

The landlord testified that the tenant contacted him in February, 2016 to report a problem with condensation and mould in the rental unit. The landlord contacted his insurer and the property manager for the strata corporation. The landlord discovered that there was black mould in window areas, around the corners of the ceiling and floor,

in the den and on the blinds. The landlord hired a restoration company to investigate and remediate the problem. The contractors hired by the landlord reported that the mould problem was not caused by any building leaks or defects. The landlord testified that the moisture levels in the rental unit were very high. He gave the tenants instructions to keep the dehumidifier on; to open windows and to run the fans in the rental unit.

The landlord testified that he was informed by the restoration company that the condensation and mould problem was caused by the tenants and was not due to any defects in the rental unit or the rental property. The landlord informed the tenants that he considered them to be responsible for the mould problem in the rental unit and would look to them to pay for the costs of remediation work. The landlord submitted invoices for the cost of the investigation and remediation work. He set out his claim in a monetary order worksheet as follows:

• Mould investigation:	\$157.50
• Deposit before restoration start:	\$315.00
• Remediation work:	\$683.03
• Balance of remediation work:	\$619.50
• Painting restoration:	\$367.50
Total:	\$2,142.53

In the invoice supplied for the investigation, the building services company stated that:

Investigation – unit (unit #); no water ingress found, mold caused by condensation

The tenant disagreed with the landlord's assessment as to the cause of the condensation and mould. The tenant took the position that he should be compensated by a rent reduction for the inconvenience of having to deal with the problem and the remediation work. The landlord did not obtain any report, apart from the invoice, to the report on the cause of the mold problem. He asked the tenant to pay 50% of the remediation costs.

In an e-mail message to the landlord dated April 4, 2016 the tenant said that he was prepared to agree to pay for half (50%) of the remediation work and he offered to pay by instalments over the next few months of the tenancy.. Later, on May 1, 2016 the tenant withdrew his offer to pay for half of the remediation costs.

The landlord submitted photographs of the rental unit. He said they showed mould that had formed due to condensation on the corners of the ceilings, on window ledges and on the blinds. The landlord said that he has owned the rental unit since 2006. There have been five tenancies during that period and the landlord said he had no condensation or mould problems with any of the previous tenants. The landlord started this proceeding on August 9th and the tenant moved out in mid-September. The tenant's security deposit was applied in payment of the rent for September.

The tenant submitted his application on January 11, 2017. He claimed payment of the sum of \$1,000.00 which was said to be in the nature of compensation for the inconveniences, time losses from work and for the co-tenant's sickness that she suffered during the period that the mould remediation was ongoing. The tenant denied that the tenants caused, or were responsible for the condensation and mould problem in the rental unit.

A witness was called to testify. According to the witness he visited the rental unit, it was well maintained by the tenant, but there were issues; the smoke detector frequently went off. The tenant also suggested that the kitchen exhaust fan did not work properly and this was partly responsible for the problem.

Analysis

The landlord claimed payment of a sum in excess of \$2,000.00 for the cost of remediation and painting to address a mould problem in the rental unit. There is no expert report documenting the cause of the mould problem. There is an invoice with a comment that the mould was caused by condensation. The landlord did not provide a move-in condition inspection report or a move-out report. There have been several previous tenants in the rental unit and the landlord did not provide documents, photographs or an inspection report to show the condition of the unit at the commencement of the tenancy. I was not informed when the unit was last re-painted. The landlord has the burden of proving his claim on a balance of probabilities; in the absence of an expert report commenting on causation and in the absence of condition inspection reports to show the condition of the unit when the tenancy began, I find that the landlord has failed to prove that the condensation and mould problem was caused by the tenant's improper use and care of the rental unit. The landlord's claim for remediation costs is dismissed without leave to reapply.

The tenant filed his claim less than a month before the scheduled hearing. The landlord responded in a timely way to the tenant's requests to investigate the condensation

problem in the rental unit. The problems were fixed. I have found that there was insufficient evidence to prove, on a balance of probabilities that the problems were caused by the tenants, but that possibility has not been excluded. The tenant claimed for his inconvenience and time lost from work. He has not provided any documentary evidence to support a claim for wage loss and the tenant was not required to be present when the work was carried out. The tenant has claimed for his co-tenant's sickness. She is not a party to the proceeding and there is no documentary evidence to support such a claim in any event. I find that there is no insufficient evidence to support an award of compensation to the tenant in any amount and the tenant's claim for compensation is dismissed without leave to reapply.

Conclusion

The landlord's application for a monetary award is dismissed without leave to reapply. The tenant's application for a monetary award is also dismissed without leave to reapply. No filing fees are awarded.

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: March 1, 2017

Residential Tenancy Branch

