



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for a Monetary Order for double 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; and to recover the filing fee from the landlord for the cost of this application.

The tenants and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord 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 double the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to comply with the Act, regulations or tenancy agreement?

Background and Evidence

The parties agreed that this tenancy started on November 01, 2015 for a fixed term tenancy that was not due to end until October 31, 2016. Rent for this unit was \$1,225.00 per month due on the 1st of each month. The tenants paid a security deposit of \$612.00 on November 01, 2015.

The tenants testified that the landlord has not returned their security deposit even though he had their address on their application which they sent by registered mail on September 22, 2016. As the landlord has not returned their security deposit the tenants seek to recover double the deposit. The tenants agreed they applied to recover the amount of \$1,225.00 and are aware it should actually be \$1,224.00.

The tenants testified that since April, 2016 they have suffered with a mice infestation in their unit. The tenants sent numerous emails to the landlord and photographs showing the mice they had caught. The landlord was first notified of this problem on April 26, 2016. The tenants continued to communicate with the landlord and the building strata and were told by the landlord that the strata would look into the problem and that they do monthly inspections for units that contact them to inform them of any problems with rodents. In one of the landlord's emails he agreed he could get another pest control professional to come into the unit but had been warned by the strata that if this conflicted with the strata's pest control company or if they caused any damage to the building then the landlord would be held libel. The landlord therefore left everything up to the strata to deal with.

The tenants testified that they contacted the strata and requested a monthly inspection. The first inspection was carried out on May 13, 2016. Up to that point the landlord had had 17 days to do something but did not take any action himself. The tenants put it in writing to the landlord and explained how important it was for health reasons to deal with the mice and requested that he resolved this issue by May 31, 2016. After the first inspection the technician confirmed a mice infestation and this information was

forwarded to the landlord. Rodent tape and poison was put down at that that time. On July 20 and August 12, 2016 two more inspections were carried out but the problem had just become worse. The tenants continued to notify the landlord and sent him regular pictures of dead mice and mice feces. It was at the third inspection that the technician advised the tenants that the mice will continue to find access into their unit because there were no baseboards and the mice just chew through the drywall.

The tenants agreed that the landlord and a technician did seal the mice holes but the mice continued to chew their way through into the unit. The tenants caught 30 mice and referred to their photographic evidence. The tenants testified that this infestation has seriously compromising their health and safety and has affected their peace and quiet enjoyment of their rental unit. The issue was never resolved by the strata or the landlord and so the tenants sent another letter to the landlord asking for a 25 percent rent reduction from April 26, 2016 to September 03, 2016. The tenants and landlord then agreed to sign a mutual agreement to end the tenancy. The tenants testified that the reason for this dispute is not because the landlord did not take some action to eradicate the mice problem but rather that this took the landlord over four months and resulted in the tenants having to leave the rental unit. Further to this the landlord never mentioned that the unit or building had a mouse problem before the tenants signed the tenancy agreement. The tenants have requested compensation of \$1,115.00.

The tenants seek an Order for the landlord to comply with the *Act* with regard to these issues. The tenants also seek to recover their costs of \$10.00 to send hearing documents by registered mail to the landlord.

The landlord testified that with regard to the mouse problem the tenants moved into the unit in November, 2015 and there was not an issue until April, 2016. Therefore, the landlord could not have informed the tenants that the unit had mice if none where present. Since the tenants have moved out there have been no mice problems reported. The landlord testified that he did act quickly after he was informed of the mice by the tenants. On May 01, 2016 the landlord called the strata manager who advised the

landlord that he would look into it. The landlord sent the strata manager pictures of the mice in the tenants' unit. The strata manager informed the landlord that this unit and two others were experiencing a problem with mice. The strata informed the landlord that they had a pest control company coming to inspect the building.

The landlord testified that he went to the unit three or four times with friends who are contactors and they moved furniture and the dishwasher and filled any mice holes. The landlord testified that he feels he did everything he could. The landlord testified that he was not going to get his own pest control company in as the Strata had advised him that if he did and there was any damage the landlord would be libel for all damage. The landlord decided to let the strata management do their work.

The landlord testified that he does not believe the tenants' peace and quiet enjoyment or the health of the tenants was at too much risk as when he went to the unit the female tenant was enjoying wine and cheese. The cheese could have also encouraged the mice. The landlord testified that there were also dishes in the dishwasher and dirty dishes in the sink on one occasion. The tenant's parents also came to visit from August 12 to August 22, 2016. If the mice were such a health risk the tenants would not have had her parent's visit. By August 22, 2016 the landlord testified that he was sick of the tenants' emails and pictures of the mice so he said if they were unhappy with the unit they could move out. No rent was asked for in September and a mutual agreement was signed and the tenants vacated on September 03, 2016.

The landlord testified that there were vinyl baseboards in the unit in all rooms. And the tenants must have removed some of these.

The tenant asked the landlord if he ever saw a mouse when he came on the three occasions to the unit. Does the landlord recall seeing a mouse run across the floor when the tenants and her friend screamed out. The landlord testified that he never saw any mice in the unit. The tenant asked the landlord to explain what he meant about their hygiene in the unit causing the mice problem. The landlord testified that hygiene is a

personal issue and different people have different levels of hygiene. The tenant asked if the landlord has any evidence that their hygiene encouraged mice. The landlord testified that he told strata he had seen dishes in the sink and dishwasher and that he had seen the tenant eating cheese. That could attract mice.

The landlord asked the tenant if he responded immediately to their concerns by contacting the strata. The tenant testified yes he did. The landlord asked if he went to fill mouse holes in the unit. The tenant testified yes he did. The landlord asked if the pest control technician removed the baseboards. The tenants testified no they were missing at the start of the tenancy.

The tenants testified that their photographic evidence shows that there were only partial sections of vinyl baseboards in the unit. In some rooms the baseboards had been removed prior to their tenancy and it was the technician that informed the tenant that without baseboards mice will be able to chew through the bottom of the drywall and gain access to the unit.

The tenant asked the landlord why the rest of the building does not have mice when their unit is on the top floor then how do the mice reach their unit if they don't go through the rest of the building. The landlord testified that only two other units have reported seeing mice activity. This does not mean the whole building is infested.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

With regard to the tenants' application to recover double the security deposit; I refer the parties to section 38 of the *Act* which says that the landlord has 15 days from either the end of the tenancy or the date the landlord receives the tenants' forwarding address in writing to file a claim to keep the security deposit or return the security deposit to the tenants. The tenants agreed they only provided an address on their application for

dispute resolution. This address is considered to be an address for service and not necessarily a forwarding address. Consequently, I find the tenants' application to recover double the security deposit is premature.

The tenants agreed at the hearing that the address on their application is their current residence. I therefore find the landlord has received the tenants' forwarding address as of March 21, 2017. The landlord therefore has 15 days to either return the tenants' security deposit of \$612.00 or file an application to keep it. The tenants' application is therefore dismissed with leave to reapply.

With regard to the tenants' application for compensation for a loss of quiet enjoyment and for hygiene reasons due to mice; I refer the parties to s. 32(1) of the *Act* which states:

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.

The responsibility therefore lies with the landlord to ensure the unit is in a state of decoration and repair that complies with the health, safety and housing standards required by law to make the unit suitable for occupation by the tenants.

I find the landlord appeared to leave this responsibility up to the strata and did not take full control of the situation. While I agree the strata did send in a pest control company and I understand that problems with mice cannot be eliminated overnight, I am not satisfied that the landlord did make the rental unit fit for occupation when the tenants were plagued by mice. Mice notoriously breed and carry disease which is not healthy for humans to be around and results in occupants of the rental unit having to take extra

precautions with food storage and cleaning of surfaces. This impacts on the tenants' enjoyment of their rental unit and can have an impact on their health if extra precautions are not taken by the tenants.

I am satisfied from the evidence before me that the baseboards were not fitted in all areas and while this may or may not have prevented mice finding their way into the unit; upon the advice of the pest control technician it appears to have contributed to this access. The landlord could have installed new baseboards of a non-vinyl type to see if this would help ease the mice access and he failed to do so.

I find that the tenants suffered almost continually with this problem for over four months and while the landlord has argued that the tenants' practise of enjoying a glass of wine and having some cheese may have contributed towards this problem I find this is so unlikely to be the root cause nor is having dishes in the dishwasher or sink. The mice caused substantial interference with the tenants' normal enjoyment of their rental unit and I find the landlord failed to take steps himself to correct this situation in a reasonable time frame causing the tenants to find alternative accommodation and end their tenancy.

However, because some steps were taken by the strata and landlord I find the tenants request for compensation equal to 25 percent from April 26 to the end of August, 2016 is extreme. I therefore limit the tenants' compensation to an amount of 15 percent of their rent from April 26 to the end of August, 2016 to a total amount of **\$759.49**.

With regard to the tenants' application for an Order for the landlord to comply with the Act; as this tenancy has ended and there is no longer a landlord/tenant relationship between the parties then even if I issued an Order of this nature it would not be enforceable. This section of the tenants' application is therefore dismissed.

With regard to the tenants application to recover the cost of registered mail of \$10.00; there is no provision under the *Act* for costs of this nature to be awarded to a party. This section of the tenants' application is therefore dismissed.

As the tenants' application has some merit I find they 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 **\$859.49** pursuant to s. 67 and 72(1) of the *Act*. 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 tenants' application to recover double the security deposit is dismissed with 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: March 22, 2017

Residential Tenancy Branch