



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARADISE HOMES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR

Introduction

On February 15, 2017, the Tenants applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement, and to reduce rent for repairs, services or facilities agreed upon but not provided.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. Both parties confirmed that they had an opportunity to consider and respond to each other’s evidence. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

Preliminary and Procedural Matters

At the start of the hearing the Tenants requested that I change the spelling of the Landlords business name within their Application. The Tenants also clarified that they are not seeking a repair order to the unit as indicated within their Application.

The Tenants’ Application indicates they are seeking compensation in the amount of \$350.00. At the start of the hearing the Tenants testified that they are seeking a higher amount of compensation. Since the Tenants did not amend their application with the Residential Tenancy Branch prior to the hearing, and did not serve the Landlord with an amended Application, the Tenants request to increase the amount of the monetary claim is denied. The Tenants’ claim is restricted to the amount on the application that was served on the Landlord.

The Landlord testified that he did not receive the Tenants' documentary evidence within two weeks of the hearing. The Landlord testified that he has had an opportunity to consider the Tenants' evidence and he wished to proceed with the hearing.

Issues to be Decided

- Are the Tenants entitled to compensation for damage or loss?
- Are the Tenants entitled to a reduction in rent due to repairs, services or facilities agreed upon but not provided.?

Background and Evidence

The parties testified that the tenancy began on February 1, 2016, as a one year fixed term tenancy that ended on January 31, 2017. The tenancy agreement indicates that the Tenants must move out of the residential unit at the end of the fixed term tenancy. The Landlord and Tenants both initialed the box on the agreement that states the tenants will move out at the end of the fixed term. The Landlord and Tenants provided a copy of the tenancy agreement. The Tenants were required to pay the Landlord rent in the amount of \$1,700.00 per month. The Tenants paid the Landlord a security deposit in the amount of \$850.00.

The parties entered into another fixed term tenancy agreement for a 2 month period that began on February 1, 2017, and ends on March 31, 2017. The tenancy agreement indicates that the Tenants must move out of the residential unit at the end of the tenancy. The Landlord and Tenants both initialed the box that they agree to that term. The Landlord provided a copy of the tenancy agreement. The Tenants are required to pay the Landlord rent in the amount of \$1,600.00 per month.

The Landlord testified that there is an addendum to the current tenancy agreement that the parties agreed to on January 6, 2017. The Landlord testified that the Tenants agreed to rent the unit on an "as is, where is" condition and will not hold the Landlord liable in any way regarding a mould issue. The Landlord provided a copy of the addendum to the tenancy agreement. The Landlord testified that he reduced the monthly rent from 1,700.00 to 1,600.00 in consideration of the mould issue.

The Landlord testified that he planned to tear down the rental unit after the first tenancy agreement expired, but the Tenants pleaded with him to enter into another tenancy agreement. The Landlord testified that he offered the new tenancy agreement based on the agreement contained within the addendum.

The Tenants are seeking compensation in the amount of \$350.00 for repairs, services, or facilities agreed upon but not provided.

The Tenants testified that they signed a new tenancy agreement with the Landlord but they felt bullied to sign it. The y testified that they thought they could live in the unit for 3 years.

The Tenant testified that her daughter's bed is ruined due to mould. The Tenants provided color photographs showing mould in the unit, but there are no photographs of the a bed.

The Tenants provided a copy of a site assessment from a remediation company dated February 5, 2017, which states a non-invasive inspection was done at the residence to determine fungal growth. The assessment confirms that a visual inspection of a bedroom confirms there is multiple fungi in the space. The report indicates that black mould causes both mental health and physical risks, including causing confusion, dizziness, shortness of breath, respiratory issues, damage to vision, and irritations to the skin.

The Landlord testified that the Tenants identified an issue with mould in the rental unit in January 2017. He testified that they revealed a little bit of black mould. The Landlord testified that the house is cold and damp because the Tenants keep the rental unit too cold. He testified that the Tenants are responsible for causing the mould problem because of lack of heating. He testified that the Tenants have provided no evidence of mould on their furniture.

The Landlord testified that five days after signing the new tenancy agreement the Tenants called a remediation company and had the assessment. The Landlord testified that the Tenants were already aware of the presence of mould.

Analysis

Residential Tenancy Guideline #16 Claims in Damages states that if a Tenant is deprived of the use of all or part of the premises through no fault of their own, the Tenant may be entitled to damages, even where there has been no negligence on the part of the Landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I do not accept the Tenants' submission that they believed they would be living in the rental unit for 3 years. I accept the evidence of the Landlord that the Tenants signed a 2 month fixed term agreement that requires them to vacate the unit at the end of the tenancy. In addition, at the end of the 1 year fixed term tenancy, the Tenants were free to move out and they were aware of the presence of mould. Therefore, I do not accept their testimony that they were bullied into signing the two month tenancy agreement and addendum. The Tenants were under no obligation to enter into a new agreement.

I find that the Tenants asked the Landlord to enter into a tenancy agreement at the rental property after they were aware of the presence of mould in the unit. The Landlord delayed his plan to tear down the property and agreed to enter into a new tenancy agreement at a reduced amount of rent on the condition that the Tenants would not hold the Landlord liable for the mould issue.

I find that the Tenants were compensated for the presence of mould by receiving a reduction in the monthly rent. I find that the Tenants agreed to accept the condition of the rental unit "as is" and that they would not hold the Landlord liable for any mould issues during the two month tenancy.

I find that the mould assessment indicates the presence of mould, but does not identify that testing was conducted that confirms that the mould was toxic. There is no claim before me that the Tenants have suffered a loss due to mental health or physical risks.

There is insufficient evidence from the Tenants to support their testimony that their furniture was damaged by mould.

The Tenants' application for compensation due to repairs, services or facilities agreed upon but not provided is dismissed.

Conclusion

The Tenant's application for compensation is dismissed.

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 20, 2017

Residential Tenancy Branch