Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0967048 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Preliminary matters

At the start of the conference call the Arbitrator checked with the parties about some evidence sent in by the Tenants that was considered late evidence. The Rules of Procedure states that the Applicant must send all evidence in 14 days prior to the hearing. In this situation the Tenants uploaded evidence 12 days and less prior to the hearing. As a result the Arbitrator checked with the Respondent/Landlord if they had received the evidence. The Landlord said he received nothing but the first hearing package from the Tenants. Consequently the Arbitrator disallowed the Tenants' late evidence from the hearing.

Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations and tenancy agreement and to recover the filing fee for this application.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on October 5, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is there a loss or damage to the Tenants and if so how much?
2. Are the Tenants entitled to compensation and if so how much?

Background and Evidence

This tenancy started on July 1, 2017 as a fixed term tenancy with an expiry date of July 31, 2018. The tenancy ended on July 31, 2018. Rent was $1,600.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of $800.00 on July 1, 2017. The security deposit was returned at the end of the tenancy. A move in condition inspection report was completed on July 15, 2017 and a move out condition inspection report was completed at the end of the tenancy.

The Tenants said the Landlord hired a company to spray a waterproofing compound on the outside of the building on October 3, 2017. The Tenants said the product is Fabrishield 700 and it contains a chemical called Tertiary Butyl Acetate. The Tenants said that after the compound was applied to part of the building they experienced symptoms of fatigue and they felt lightheaded. The Tenant continued to say the next day the symptoms continued and they also felt nauseous, dizzy and they had trouble breathing. The Tenant said they when to the hospital for testing. The hospital tested for carbon monoxide toxicity and found none and the Tenants declined any other testing.
Following this the Tenants said they requested the Landlord to tell them the name of product used on the building and they followed up with their doctor. The Tenants said the doctor and blood tests confirmed their symptoms and exposure. The Tenants did not provide any medical evidence to corroborate a medical conditions resulting from exposure to chemicals. Further the male Tenant said that they did not have any medical testing that showed chemical toxicity. The Tenant said they felt the symptoms and it impaired their ability to function normally.

Tenants continued to says that as a result of not being able to functions normally they have experienced losses and damages that they are requesting to be compensated for. The Tenants monetary claim is as follows:

1.	Lost work income from private janitorial contracts	$ 4,300.00
2.	Recover insurance deductible	$ 1,000.00
3.	Return of rent for October, 2017	$ 1,600.00
4.	Increased cost of Hydro (October 2017 hydro bill)	$ 270.00
5.	Recover internet costs for October 2017	$ 40.00
6.	Recover insurance premium for October 2017	$ 60.00
7.	Male Tenant loss personal income	$ 1,295.00
8.	Female Tenant loss personal income	$ 560.00
9.	Female Tenant recover of cost of course dropped	$ 520.00
10.	Recover filing fee for the application	$ 100.00
11.	Personal damages	$ 20,255.00
	Total	$30,000.00

The Tenants continued to say that they could not do their janitorial work as they did not feel well enough to do the work. This was a loss of income of $2,100.00 for one property and $2,300.00 for a second property. Further their health condition stopped the male Tenant from doing his private musical endeavours reducing his personal income. The female Tenant said her health condition from

the chemical exposure prevented her from going to work and she dropped a course at university because she could not do the course work. The female Tenant she when she dropped the course it delayed her graduations by one term.

Further the Tenants made a personal claim on their tenant insurance policy which paid for alternative housing during the time they were out of the rental unit as well as food, clothing and other personal items. As a result the Tenants are requesting to recover their insurance deductible of $1,000.00 from the Landlord.

In addition the Tenants are requesting the October 2017 rent of $1,600.00 be returned as they did not live in the unit. The Tenants continue to say they are also requesting their internet expense of $40.00, their insurance premium of $60.00 and the hydro bill of $270.00 for October 2017 to be included in their claim as they were not in the unit for October 2017 and so the Tenants believe they should not be responsible for these expenses.

The Tenants continued to say their final claim is for $20,255.00 for personal damages. The Tenants said the Landlord exposed them to a chemical that had detrimental affects on their health which resulted in them not being able to perform their normal life duties. The Tenants included in their statement the following description of their personal damages.

"This is number reflects the personal health, professional, educational, emotional and mental damages inflicted, including - prolonged symptoms from exposure, significantly reduced musical performance capabilities, missed professional opportunities, high stress and anxiety leading to poor academic results and ultimately academic probation, dropped courses resulting in prolonged post-secondary graduation, lost time mitigating the situation, lost time seeking medical services and lost time seeking both legal services and professional counselling. "

It should be noted that the Tenants did not provide any corroborative evidence to support the medical claims, financial information indicating lost income, or evidence supporting professional advice or counselling. The Tenants did submit correspondence between them and the Landlord, text messages with the Landlord, photographs of the unit and building repairs and videos of the unit.

The Landlord started his response by indicating he only got the Tenants original hearing package which did not contain the Tenants' monetary claim so the Landlord said he was concerned that he did not have time to prepare himself correctly. The Landlord agreed to continue the hearing with the information that he had.

The Landlord's agent the J.B. said he was responsible for the water proofing of the building. As such he posted a Notice on September 29, 2017 that the water proofing work was starting on Tuesday and tenants should keep there windows and doors closed because there will be a strong smell that will dissipate. Agent J.B. said they hired a professional company that specializes in this work and the product is safe and can be purchased over the counter at many stores. Agent J.B. said the product does smell but it dissipate in a few days. J.B. continued to say that when the Tenants complained about the smell and perceived health issues the product had not been used on the exterior of the building at the Tenants' unit. As well J.B. said he was in the Tenants' unit on October 5, 2017 and he

did not perceive a strong smell. The Landlord said when the Tenants complained about the smell and that they did not feel well the Landlord provided alternative accommodation at another furnished rental unit owned by the Landlord. The used of the alternative accommodation unit originally was for 2 nights but was extended to 9 nights on the request of the Tenants. The Landlord continued to say the Tenant's insurance company paid for the alternative accommodation for those 9 nights and the Landlord understood that the Tenant's insurance company paid for other accommodations for the Tenants up to November 1, 2017 when the Tenants moved back into the rental unit. The Landlord continued to say that they used fans to help dissipate the smell of the treatment in the Tenants' unit and they completed the exterior treatment while the Tenants were in alternative accommodations. The Landlord said this is a normal type of work done in the city and the Landlord was responsible in how they notified the tenants and how they did the notified the work. As well the Landlord said he believes they dealt with the Tenants issues is a responsible manner. The Landlord said he disagrees strongly with the Tenants application and he is requesting it be dismissed.

Further the Landlord said the Tenants have not provided any medical evidence that indicates that they have or had a medical issue as a result of the Landlord's actions or the application of the water proofing compound. The Landlord said the Tenant's application is based on their perception of the situation and it is just their word. The Landlord said when you make a claim against someone you need evidence to support it. The Landlord said the Tenants have not provided any evidence to support their claim.

The Landlord continued to respond to each of the Tenants' claims:

1. The Tenants have not provided evidence that they quit their janitorial contracts because of the health issues or the actions of the Landlord. The Landlord said there may have been other reasons.
2. The Landlord said he is not accepting that they have done anything wrong but there is a clause in the tenancy agreement 14 (g) that states the maximum amount that can be claimed by a tenant for the recovery of an insurance deductible is $500.00. The Landlord continue to say the Tenants' insurance company has not sought any compensation from the Landlord's insurance company for the Tenants' claim so this indicates the Tenants' insurance company is not putting responsibility of the claim on the Landlord.
3. The Landlord said the Tenants may not have lived in the rental unit during October 2017, but they held the tenancy agreement on the unit, they had their belongings in the unit and they had use of the unit for October 2017. Further the Landlord said the Tenants alternative accommodation was paid by insurance therefore the Tenants did not have a loss.
4. The Landlord said the Tenants' claims for the internet bill and insurance premiums are the responsibility of the Tenants. The alternative accommodation provided by the Landlord had internet services and the insurance premium is the choice of the Tenants to pay. Theses bills are not the Landlord's responsibility.
5. The Landlord continued to say he agrees the hydro bill for October 2017 may have been higher than normal as the Landlord had fans in the unit. It should also be noted the Tenant had an unauthorized ozone treatment done to the unit which requires electricity as well. The Landlord said they accept responsibility for a portion of the October hydro bill. The male Tenant said the normal hydro bill is about $100.00 and the October bill was $270.00.

6. The Landlord continued to say the Tenants' claims for loss of personal income and the university course that was dropped have no evidence to support that the Landlord caused these things to happen. The Landlord said the Tenants have not proven they have any medical issues caused by the water proofing of the building that resulted in their inability to function normally.
7. The Landlord said the last claim for personal damages for $20,255.00 is completely unfounded and is not supported by evidence. The Landlord said there are no financial records to prove loss, no medical evidence to show a health issue and no performance information to prove a loss of performance. The Landlord said disruptions in tenancies happen every day like water leaks, electoral issues, etc. and landlord and tenants work things out without suing each other. The Landlord said they handled the situation responsible and correctly. The Landlord gave notice of the work to be done, when the Tenants complained about the smell the Landlord provided alternative accommodation and the Landlord remediated the issue in the rental unit. The Landlord said the product used is safe and a professional company did the application. The Landlord said the Tenants have not provided evidence to support their claims and the applications should be dismissed.

The Tenant responded that the exterior of the building was under maintenance during the application of the water proofing and it may have pooled resulting in a toxic smell in the Tenants' rental unit. The Tenant said if this is the case the Landlord is responsible for the Tenant's health issues and their claims are valid. Further the Tenant said the Landlord did not tell them what the product was in a timely manner which may have put their health at risk and the Landlord may have put their high value belongings at risk during the dissipating of the unit with people coming and going.

The Tenant continued to say they moved back into the unit November 1, 2017 after an air quality test was done showing the quality was well below recommended standards. The Tenant said although they have no medical evidence to prove they had health issues that affected their performance of every day activities they did have health issues that caused them losses and personal damage.

The Landlord said in closing that the Tenants have not provided evidence to prove their claims. The Landlord acted responsibly, correctly and in the normal way when these types of tenancy issues arise. The Landlord said there is no evidence to show the Landlord is responsible for the Tenants' claims except part of the hydro bill for October 2017.

The Tenant said in closing they were unsure of the number for the personal damages claim so they used $20,255.00. The Tenants continued to say the Landlord did not test the unit after they complained; the Landlord did not give them the chemical name in a timely manner. The claims they are making are for losses caused by the Landlord and they are different than the insurance claims they made to their insurance company.

Analysis

I have reviewed the evidence submitted by the parties and the testimony given at the hearing. The Parties will abide by the following decision.

The Tenants indicated that they do not have any corroborative evidence that they experienced health issues as a result of the water proofing treatment applied to the rental complex, but they have their affirmed testimony of the events and issues. The Tenants agreed that their claim is primarily based on their statements and their account of the events that happened after the water proofing treatment was applied to the building. As well, the Tenants submitted correspondence between the Landlord and themselves, photographs of their unit and repair work on the building and videos of the unit. The Tenants claim their performance to do normal daily work and personal events was compromised by the affects of the chemical used in waterproofing the rental building.

The Landlord said they gave proper notice to all tenants in the building of the work being done and this is a product that is used regularly on buildings and can be purchased over the counter at many stores. The Landlord said the product is safe and they had a professional company that specializes in this work and using this product. The Landlord continued to say the Tenants have not provided any supporting evidence for their claims beyond their interpretation of what happened. Further the Landlord said they acted responsible and correctly to the Tenants concerns and complaints by providing alternative accommodations immediately and by mitigating any smell in the Tenants' rental unit. The Landlord said tenancy interruptions happen all the time and they dealt with this situation responsibly and appropriately. The Landlord requested the application be dismissed.

Further, the Landlord agrees the hydro costs were increased in October 2017 due to the Landlord's fans operating in the Tenants' unit. As well the Tenants agreed the normal cost of hydro was about $100.00 and they did run an unauthorized ozone treatment in the unit which used extra electricity. Consequently, I find the Landlord is responsible for part of the hydro bill for October 2017 in the amount calculated as $270.00 (Oct. bill) - $100.00 (normal bill) = $170.00 divided by 2 as both parties used extra electricity = $85.00. I order the Landlord to pay the Tenant $85.00.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts or other evidence and the applicant must show how they mitigated or minimized the loss.

As well, in order to prove a claim an applicant must provide corroborative evidence that supports the applicants claim. The burden of proving a claim lies with the applicant and when it is just the applicants' word against that of the respondent that burden of proof is not met. In this situation, I find the Applicants/Tenants have not provided sufficient corroborative evidence to prove that the water proofing product applied to the rental building was unsafe or that it caused the Tenants health issues.

The Tenants said the testing at the hospital emergency department was negative and they refused other tests. Further the Tenants said they had confirmation from their doctor and they had blood tests that show they had been exposed to the chemical in the water proofing product. The Tenants alleged that the water proofing product caused their health issues, but the Tenants did not submit any blood test reports or doctor's notes. The evidence the Tenants have submitted shows that there was a smell issue in the rental complex caused by the water proofing product, but the evidence does not prove that they actually had a loss that was solely caused by the Landlord. The Landlord did not stop them from working, attending to personal matters or going to school. The Tenants have not established grounds to prove the Landlord was solely responsible for the Tenants alleged lack of normal performance in their lives. Consequently I dismiss the Tenants' claims except for the hydro claim in the amount of $85.00.

As the Tenants were not successful in this matter I order the Tenants to bear the cost of the filing fee of $100.00 that they have already paid.

Conclusion

I find that the Tenant's has not established grounds to prove the compensation claims in the application except for the hydro claim in the amount of $85.00; therefore I dismiss the Tenants' application with out leave to reapply.

A Monetary Order in the amount of $85.00 has been issued to the Tenants. A copy of the Order must be served on the Tenant: 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: January 30, 2019

Residential Tenancy Branch