



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNDCL-S, FFL

Introduction

A hearing was convened on November 19, 2018 in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, for a monetary Order for damage, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on July 18, 2018 the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenants, via registered mail. The Tenants acknowledged receipt of these documents.

On July 13, 2018 the Landlord submitted 5 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via registered mail, on July 18, 2018. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 19, 2018 the Landlord submitted 118 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenants on October 27, 2018. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On October 31, 2018 the Tenants submitted 14 pages of evidence to the Residential Tenancy Branch. The Advocate for the Tenant stated that this evidence was served to the Landlord, via registered mail, on October 31, 2018. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The hearing was reconvened on January 14, 2019 for reasons outlined in my interim decision of November 26, 2018.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

All of the evidence submitted by the parties has been reviewed but it is only referenced in this written decision if it is directly relevant to my decision.

Preliminary Matter

Four people were observing the hearing on November 19, 2018 for training purposes, three of whom are employees of the Residential Tenancy Branch. The Landlord and the Tenants were advised of the presence of these observers prior to the start of the hearing.

One person observed the hearing on January 14, 2019. This person was observing the hearing as he is training to become an advocate.

The names of the observers have not been recorded in this decision as they did not participate in the hearing in any way.

Issue(s) to be Decided

Is the Landlord entitled to compensation for damage to the rental unit, to compensation to cleaning, to compensation for lost revenue, and to keep all or part of the security deposit?

Background and Evidence

The Landlord and the Tenants agree that:

- the tenancy began on February 01, 2017;
- the tenancy ended on June 30, 2018;
- the Tenants agreed to pay monthly rent of \$1,400.00 by the first day of each month;
- the Tenants paid a security deposit of \$1,400.00;
- a condition inspection report was completed at the beginning of the tenancy;
- a condition inspection report was completed on June 30, 2018, which was the end of the tenancy;

- the Tenants' forwarding address was written on the condition inspection report which was completed on June 30, 2018.

The Landlord is seeking compensation, in the amount of \$2,000.00, for repairing walls and painting the rental unit.

The Landlord stated that the walls were in new condition at the start of the tenancy. The Tenants contend that the walls were not in new condition, which they submit is established by the condition inspection report that was submitted in evidence. The Agent for the Landlord stated that condition inspection report that was completed at the start of the tenancy correctly reflects the condition of the rental unit at the start of the tenancy.

The Landlord submitted a copy an estimate for repairing walls and painting, in the amount of \$3,580.00. \$3,100.00 of the estimate is for painting; \$50.00 is for repairing wall damage; and \$530.00 is for repairing mold damage.

The Agent for the Landlord stated that the entire rental unit was repainted and the Landlord recognizes that the Tenant should not be responsible for repainting the entire unit. He stated that the entire rental unit was newly painted in January of 2017.

The female Tenant stated that the rental unit was not newly painted at the start of the tenancy, with the exception of the upstairs bathroom.

The Landlord submitted photographs (101-107) of the rental unit which the Agent for the Landlord stated were taken at the end of the tenancy. The Agent for the Landlord stated that these photographs show that the walls were damaged in various places during the tenancy.

In response to the Landlord's photographs the male Tenant stated that:

- the damage in photograph 101 is worse than when they vacated the rental unit;
- the damage in photograph 102 occurred during the tenancy;
- he does not recognize the damage in photograph 103 or 106;
- the damage in photograph 104 occurred during the tenancy;
- the damage in photograph 105 must have occurred after they vacated the rental unit; and
- the damage in photograph 107 was caused by floor boards lifting due to moisture in the complex.

The Landlord submitted photographs (108-117) of the rental unit which the Agent for the Landlord stated were taken at the end of the tenancy. The Agent for the Landlord stated that these photographs show that the walls in the upstairs bathroom and bedrooms were damaged by mold.

In regards to the presence of mold in the rental unit the male Tenant stated that:

- the Landlord was informed of the presence of mold at various times during the tenancy;
- they were told to leave the fan on; and
- photographs 84 and 85 submitted by the Landlord show there was mold on the exterior of the unit, which indicates a moisture problem in the complex.

In regards to the presence of mold in the rental unit the female Tenant stated that:

- when they first moved into the unit they found mold on the wall behind the kitchen stove;
- the Landlord was informed of the mold in this location;
- the Landlord responded by removing a portion of the drywall;
- there have been 3 or 4 inspections during this tenancy;
- the mold in the rental unit was discussed during each of those inspections; and
- a neighbour told them there was a flood in the rental unit a few months prior to the start of this tenancy.

In regards to the presence of mold in the rental unit the Agent for the Landlord stated that:

- there was a flood in the kitchen of the rental unit a few months prior to the start of the tenancy;
- he personally remediated the rental unit by using a dehumidifier for 2 weeks and using a silica gel that absorbs moisture from the air;
- the unit was not inspected by an expert after the flood;
- the mold shown in the photographs was first detected in April of 2018
- after it was detected the Tenants were told they should clean and paint the mold;
- the Landlord cleaned the mold after the tenancy ended and painted the walls that were impacted;
- the Landlord did not determine the cause of the mold;
- if the flood in the kitchen was the cause of the mold he would not expect to see the mold isolated to the top floor of the rental unit;
- there have been no problems with mold since the tenancy ended;

- photographs 84 and 85 show there was algae, not mold, on the exterior of the unit; he does not know why algae would accumulate on the exterior of the unit, but speculates it might be the moist climate; and
- even if the Tenants were not responsible for the mold growth, they did not report the problem to the Landlord in a timely manner, which exacerbated the problem.

In regards to the presence of mold in the rental unit the Landlord stated that:

- there have been 2 or 3 inspections during this tenancy;
- mold was not observed until the inspection that occurred in April of 2018;
- the Tenants reported mold behind the stove near the start of the tenancy; and
- when the Landlord inspected the area behind the stove they determined it was not mold.

In regards to the presence of mold in the rental unit the Advocate for the Tenant stated that:

- moisture damage was noted in the condition inspection report;
- a cracked window was also noted on the condition inspection report, which may have contributed to water egress; and
- the moisture problem within the complex is evidenced by the mold on the exterior of the home.

The Tenants submitted a text message sent to the Landlord in April of 2018 in which the female Tenant declares, in part, that she has cleaned the mold with a strong cleaner but it continues to spread and they have kept the windows open a bit, with the fan on.

The Landlord stated that the rental unit was extremely dirty at the end of the tenancy. The Landlord submitted photographs of several areas in the rental unit that needed cleaning in the rental unit, which were taken on the day of the final inspection. The male Tenant stated that the photographs fairly represent the condition of the rental unit at the end of the tenancy.

The Landlord stated that she personally spent more than 64 hours cleaning the rental unit, none of which was spent cleaning mold. The Landlord is seeking compensation at an hourly rate of \$50.00.

The Advocate for the Tenants stated that he believes, on the basis of the photographs submitted in evidence, that it would have taken approximately 20 hours to clean the rental unit. He argued that compensation of \$25.00 per hour would be reasonable.

The Advocate for the Landlord stated that the condition inspection report that was completed at the end of the tenancy does not establish that the rental unit required significant cleaning. He noted that the report suggests cleaning was only needed in a few areas.

The Landlord agreed that the condition inspection report that was completed at the end of the tenancy was not completed properly; however she argues that her pictures “speak a thousand words”.

The Landlord is seeking compensation for lost revenue. The Landlord stated that due to the condition of the rental unit they were unable to advertise it for rent until August of 2018, and that it was re-rented for September 01, 2018.

Analysis

Section 21 of the *Residential Tenancy Regulation* stipulates that a condition inspection report completed that is signed by both parties is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary. As the parties signed the condition inspection report that was completed at the start of the tenancy to indicate they agreed with the content of the report and there is no suggestion that it does not accurately reflect the condition of the unit at the start of the tenancy, I find that report is evidence of the state of repair and condition of the rental unit at the start of the tenancy.

I note that the Tenants did not agree that the condition inspection report that was completed at the end of the tenancy fairly represented the condition of the rental unit at the end of the tenancy and I cannot, therefore, rely on this report as evidence of the state of repair and condition of the rental unit at the end of the tenancy.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the condition inspection report that was completed at the start of the tenancy I find that the walls in the unit were undamaged except for moisture damage on the living room walls and trim and a hole in the corner of one of the bedrooms.

On the basis of the photographs submitted in evidence I find that the walls were damaged, in places, by something other than moisture during the tenancy. In reaching this conclusion I was influenced by the Tenants acknowledgement that the damage depicted in photograph 102 and 104 occurred during the tenancy.

Although the male Tenant stated that he does not recognize the damage depicted in photograph 103, and 106, I find that this damage is consistent with damage that would occur during a tenancy or doing move out and is significantly less consistent with damage that would occur after the rental unit had been vacated. As the Tenants do not allege that the damage was present at the start of the tenancy I find it reasonable to conclude that it occurred during the tenancy.

I find that the damage depicted in photographs 101 and 105 is consistent with damage that occurs as a result of moisture in a residential complex. I therefore cannot conclude that this damage occurred due to the actions of the Tenants.

I find that the damage depicted in photograph 107 is consistent with damage that would occur during a tenancy or doing move out and is less consistent with damage that would occur as a result of floor boards lifting, as the Tenants contend. I therefore find it reasonable to conclude that this damage occurred due to the actions or negligence of the Tenants.

I find that the Tenants failed to comply with section 37(2) of the *Act* when the Tenants failed to repair the damage depicted in photographs 102, 103, 104, 106, and 107. I therefore find that the Landlord is entitled to compensation for the cost of repairing that damage.

It is difficult to determine how much compensation is due for repairing the damage depicted in photographs 102, 103, 104, 106, and 107, as the estimate provided by the Landlord provides an estimate for repairing all of the wall damage depicted in photographs 101 – 107 and for painting the entire unit. On the basis of the information provided, however, I find it reasonable to conclude that the damage in photographs 102, 103, 104, 106, and 107 could be repaired and painted for \$100.00.

On the basis of the undisputed evidence I find that a substance, which both parties believe was mold, accumulated on walls on the second floor of the rental unit during this tenancy. I find that the Landlords have submitted insufficient evidence to establish that the mold accumulation was the result of the Tenants' actions. In reaching this conclusion I find that the Landlord did not identify the cause of the mold accumulation.

I find, however, that there was a significant amount of evidence that suggests there was a moisture problem in the residential complex prior to the start of the tenancy, which includes:

- the undisputed evidence that there was a flood in the kitchen of the rental unit a few months prior to the start of the tenancy;
- the undisputed evidence that mold or algae had accumulated on the exterior of the rental unit during the tenancy; and
- the entry on the condition inspection report that was completed at the start of the tenancy which declares there is "moisture damage" on the walls/trim of the living room.

I find it entirely possible that the flood in the kitchen was not properly remediated and that it may have contributed to continued mold growth in the rental unit. In reaching this conclusion I was influenced by:

- the undisputed evidence that the Tenants reported mold behind the kitchen stove sometime near the beginning of the tenancy, although the Landlord contends mold was not detected;
- the fact the rental unit was remediated by the Agent for the Landlord after the flood, rather than by a professional; and
- the fact that the unit was not inspected by an expert after the flood to confirm that the unit had been properly dried.

As I find it entirely possible that the flood in the kitchen may have contributed to continued mold growth in the rental unit and there is insufficient evidence to establish that the Tenants' actions caused the mold growth, I am unable to conclude that the Tenants were responsible for remediating the mold at the end of the tenancy. I therefore dismiss the Landlord's claim for compensation for repairing walls that were damaged by mold.

In adjudicating the claim for mold I have placed little weight on the Agent for the Landlord's submission that he would not expect to see the mold isolated to the top floor of the rental unit if the flood in the kitchen was the cause of the mold. I find that it is entirely possible that water accumulated elsewhere in the rental unit was a result of the

flood which was simply undetected by the Landlord and was, therefore, not properly remediated.

In adjudicating the claim for mold I have placed little weight on the Agent for the Landlord's testimony that there have been no problems with mold since the tenancy ended. I find that there are many potential reasons for the mold not appearing over the past few months, including that the problem may be temporarily masked and the weather since the unit was painted has been relatively dry, which would slow down growth.

In adjudicating this claim I find that the Landlord submitted insufficient evidence to establish that the Tenants did not report the mold in a timely manner. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Landlord's submission that mold was never reported before it was located in April of 2018, with the exception of mold in the kitchen, or that refutes the Tenants' submission that mold was frequently discussed during the tenancy.

As the Landlord has failed to establish that the Tenants did not report the mold in a timely manner, I cannot conclude that the Tenants' inaction contributed to the mold accumulation.

On the basis of the photographs submitted in evidence I find that the Tenants failed to comply with section 37(2) of the *Act* when they failed to leave the rental unit in reasonably clean condition. Although the condition inspection report does not indicate a significant amount of cleaning was required, I find that the photographs clearly establish that the unit was not left in reasonably clean condition. As has been previously stated, the condition inspection report that was completed at the end of the tenancy cannot be relied upon as evidence of the state of repair and condition of the unit at the end of the tenancy, as the Tenants did not agree with the content of the report. Even if the parties had agreed about the content of the report, I would have heavily relied on the photographic evidence as that, in my view, gives the most accurate representation of the condition of the unit at the end of the tenancy.

On the basis of the photographs submitted in evidence I find that it would have taken approximately 30 hours to bring the rental unit to a reasonable state of cleanliness. Although I accept the Landlord's testimony that she spent over 64 hours cleaning the unit, I find that her cleaning efforts may have exceeded what the Tenants were required to do under the *Act*. I therefore find that the Landlord is entitled to compensation for 30

hours of labour, at a rate of \$25.00 per hour, which is \$750.00. I find this hourly compensation to be reasonable for labour of this nature.

On the basis of the undisputed evidence I find that the Landlord was unable to re-rent the rental unit until September 01, 2018, due to the condition of the rental unit at the end of the tenancy. I find that even if the Tenants had left the unit in reasonably clean condition, the Landlord would have been unable to re-rent the unit due to the need to remediate the mold in the unit. As I am unable to conclude that the Tenants were responsible for remediating the mold at the end of the tenancy, I cannot conclude that the Tenants are required to compensate the Landlord for any lost revenue associated to a delay in re-renting the unit.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$950.00, which includes \$100.00 for repairing wall damage; \$750.00 for cleaning; and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to retain \$950.00 from the Tenants' security deposit in full satisfaction of this monetary claim.

As the Landlord has failed to establish a right to retain the entire security deposit of \$1,400.00, I find that the Landlord must return the remaining \$450.00 to the Tenants

Based on these determinations I grant the Tenants a monetary Order for \$450.00. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: January 15, 2019

Residential Tenancy Branch