Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LING & LOK ENTERPRISES CO. LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's three agents, landlord CL ("landlord"), "landlord LL" and "landlord JL" and the two tenants, male tenant ("tenant") and "female tenant," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she and landlord LL are directors and landlord JL is building maintenance, all authorized to speak on behalf of the landlord company named in this application. Landlord LL and landlord JL did not testify at this hearing. This hearing lasted approximately 40 minutes.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and the tenants were duly served with the landlord's evidence.

Issues to be Decided

Are the tenants entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on August 1, 2016 and ended on March 31, 2020. Monthly rent in the amount of $2,255.00 was payable on the first day of each month. A security deposit of $1,100.00 was paid by the tenants and the landlord returned the full security deposit to the tenants. A written tenancy agreement was signed by both parties.

The tenants seek a monetary order of $4,819.35, plus the $100.00 application filing fee. The landlord disputes the tenants' entire application.

The tenant testified regarding the following facts. The tenants want a refund of pro-rated January 2020 rent that they paid to the landlord, after they were displaced from the rental unit due to a leak. The tenants received February 2020 rent free from the landlord. The tenants paid March 2020 rent and it was refunded by the landlord, as one-month free rent compensation pursuant to a 4 Month Notice to end tenancy that the landlord gave to the tenants to repair the rental unit ("4 Month Notice"). The tenants want an additional one month of rent free after they moved out, pursuant to the 4 Month Notice, because they did not live in the rental unit in March 2020. The tenants want their hydro costs back, accrued from January to March 2020, on a pro-rated basis. The tenants were required to vacate the rental unit, due to water damage. The landlord returned the rental unit to a liveable state in February 2020, but the tenants did not live there from January 5 to March 25, 2020, because the tenants did their own air test, which they were told to do by landlord. The air test revealed toxic levels of mold in the bedroom where the two tenants and their infant child slept, so the tenants chose not to return to the rental unit. The landlord refused to do an air test after they had the restoration company do repairs, so it was unsafe for the tenants and their children to move back into the rental unit.

The tenant stated the following facts. The landlord did repairs to the rental unit, dealt with the issue immediately without delay, and there was no negligence or wilful actions on the landlord's part, to cause the leak, the mold or the water damage. However, the leak occurred for the second time, in the same place in the roof. There may have been an issue with the previous roofers who first fixed the leak. The tenants provided a copy

of their air test report to the landlord, who refused to accept it as valid, so the tenants moved to a more expensive new place, paying $600.00 per month more, for a place with smaller square footage. The tenants were evicted for the landlord to do repairs, which was brought on because there was black mold in the rental unit. The landlord offered for the tenants to return to the rental unit after the repairs but only if they signed a new tenancy agreement with a higher amount of rent and agreeing to accept the rental unit "as is" with no black mold. The tenants had tenants' insurance and made a claim for their personal belongings, but since they were not damaged, they did not get any compensation. The tenants did not make any other insurance claims for displacement or living expenses because the deductible was $5,000.00, which is a higher amount than they are seeking from the landlord at this hearing.

The landlord testified regarding the following facts. The landlord completed repairs in the rental unit due to water leaks. On December 31, 2019, the landlord received a text message from the tenant about interior leaks in the rental unit due to heavy rain, so she immediately contacted a restoration company, who went to the rental unit within two hours, despite the New Year's Eve holiday. The landlord accepted and deposited the tenants' rent payment for January 2020 of $2,255.00 and does not agree to refund this to the tenants. The landlord did not deposit the tenants' February 2020 rent payment and gave this month free to the tenants as compensation. The tenants left their belongings in the rental unit the entire time while the repairs were ongoing. The landlord returned the tenants' rent for March 2020 to them, as one-month free rent compensation pursuant to the 4 Month Notice, despite the tenants not giving 30 days' notice to vacate, only notifying the landlord on March 12, 2020 that they were leaving on March 31, 2020. The tenants were supposed to vacate on May 31, 2020, according to the 4 Month Notice that the landlord gave to the tenants to complete repairs in the rental unit. The landlord returned the tenants' full security deposit to them. The tenants' reduced rent is compensation for the hydro bill costs that they are claiming.

The landlord stated the following facts. These are not emergency repairs, so the landlord is not required to compensate the tenants. The tenants chose to get their own mold report and chose their own company, so the landlord is not responsible to reimburse them for this cost. It was not a thorough report provided by the tenants because there were no photographs taken of the areas tested. The landlord obtained a thorough report from their own restoration company, which included photographs of the areas tested with a water level instrument, and the tenant was present. The landlord's report was sent to WorkSafe BC, who said the area was deemed safe for their workers. The landlord's report indicates no elevated moisture levels, and no mold or microbiological growth in the rental unit. The tenants are required to keep the rental unit

in accordance with standards of health and cleanliness. The landlord had dryers and dehumidifiers in the rental unit within two hours of being notified of the leaks, the tenants did not make any claims under any insurance policy, despite the landlord asking for policy information in order to assist the tenants. The landlord provided documents to show that the tenants displacement and living expenses would have been covered by tenants' insurance. The landlord mitigated the costs and acted immediately regarding this issue.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

1) Proof that the damage or loss exists;
2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenants' application of $4,819.35 without leave to reapply.

The tenants provided a number of photographs, reports, letters, bills, and other documents, with their application. However, the tenants did not go through these documents during the hearing. The tenants did not provide detailed information about their application during the hearing. I informed the tenants during the hearing about the above four-part test and notified them that it is their burden of proof, on a balance of probabilities, as the applicants, to prove their claims.

The tenants did not go through their monetary order worksheet or breakdown during the hearing. They did not confirm the specific amounts they were seeking for each claim. They did not explain the pro-rated amounts, the hydro bills, the amounts of rent or other such information. I find that they did not adequately dispute the landlord's testimony and evidence presented during the hearing, regarding the landlord's efforts to rectify the water issue. I find that the tenants failed part 3 of the above test.

The tenants chose not to live at the rental unit, despite the fact that it was returned to a liveable state in February 2020. I find that the tenants voluntarily vacated the rental unit. The fact that the tenants chose to leave when they did, was up to them. The tenants were entitled to remain in the rental unit until May 31, 2020, the effective date of the 4 Month Notice or to dispute the notice at the Residential Tenancy Branch. Yet, they decided to leave two months earlier on March 31, 2020.

I find that the landlord provided compensation to the tenants for the water leak issues. The tenants received one month of free rent of $2,255.00 for February 2020. The tenants received a full return of their security deposit of $1,100.00. The tenants also received one-month free rent compensation, as required, pursuant to section 51 of the *Act* and the 4 Month Notice. They received a refund of their March 2020 rent. They are not entitled to a second month of free rent, after moving out, pursuant to the 4 Month Notice. I also find that they are not entitled to any hydro or report costs.

I find that the landlord adequately dealt with the tenants' complaints in a reasonable time period, by having a professional restoration company inspect, repair the leak, and restore the rental unit. The landlord contacted the company immediately upon notification of the leak from the tenant and had the company attend at the rental unit within two hours, despite the holiday time period. The landlord provided a copy of the report from the restoration company, including photographs, stating that the company found no mold or microbiological growth in the rental unit.

The tenants agreed during the hearing that they failed to make a claim through their insurance company because they did not want to pay the $5,000.00 deductible, since they are claiming less than $5,000.00 against the landlord at this hearing. The tenants could have claimed for losses under their insurance policy, including for displacement and living expenses, but chose not to do so, which is up to them.

The tenants agreed during the hearing that they had no proof that the landlord wilfully or negligently caused the leak in the rental unit, any mold issues, or that they delayed in any way in repairing or responding to the leak. While the leak may have occurred in the same area of the roof, I find that the tenants failed to show that the landlord or their repair professionals or roofers caused the second leak to occur, through wilful or negligent actions. I find that the tenants failed part 2 of the above test.

As the tenants were unsuccessful in their application, I find that they are not entitled to recover the $100.00 filing fee from the landlord.

Conclusion

The tenants' entire application is dismissed without 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: December 07, 2020

Residential Tenancy Branch