



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNDC MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; and the return of the tenant's security deposit. Both parties attended and each gave affirmed testimony in turn.

Monetary Issues to Be Decided

- Whether the tenant is entitled to a monetary order in compensation for loss of use and enjoyment of the suite and the reduction of value of the rental unit from September 7, 2008 until November 7, 2008.
- Whether or not the tenant is entitled to be reimbursed for damaged furniture, personal items and moving costs. This is contingent upon determining the following:
 - Has the tenant proven that the items were damaged or destroyed and the early move-out was necessary?
 - Has the tenant proven that the damage or loss and the need to move out early was the fault of the landlord in violation of the Act?

- Has the tenant proven the costs incurred for the repair, replacement of the item or the costs associated with enduring or rectifying the problem?
- Has the tenant done everything possible to minimize the damages and costs as required under section 7(2) of the Act?

Background and Evidence

The tenant testified that the tenancy started on April 7, 2008 and ended on November 7, 2008. The tenant testified that a mould problem became evident in mid-September 2008 when visible mould was found on the tenant's furniture and the walls of the residence. The tenant submitted photographic evidence of the mould damage and structural details. The tenant testified that the landlord took the position that the mould problem was likely created by the tenant's two large dogs and the tenant's living conditions. The tenant testified that the landlord advised the tenant to clean up the mould and also to seek information on the subject. The tenant testified that the tenant's inquiries and an investigation by a Public Health Inspector found that the mould was not likely caused by the tenant or the tenant's dogs. Evidence submitted by the tenant included an email response that the tenant purported was from an expert in the field dated October 10, 2008 stating that mould does not grow as a result of dog dander, but as a result of water ingress and requires three elements including: a water source, a food source and a temperature source. The tenant testified that the tenant's decision move was prompted by the landlord's response to the complaint about mould in that the landlord gave the tenant an ultimatum with a choice of either getting rid of the two dogs or vacating the rental unit and that the tenant must decide which option would be taken within four days. On October 13, 2008, the tenant sent a letter to the landlord outlining the concerns about the structure of the building, mould problems and damage to furnishings and in this letter the tenant confirmed that the tenant had decided to exercise the option of moving out as presented by the landlord.

The tenant's evidence also included a copy of an inspector's report from the Health Authority dated November 12, 2008, stating that during the inspection conducted on November 6, 2008 it was found that , "*mould growth was present along the baseboards of the living room and adjacent bedroom*". The report did not specify the cause of the mould, but stated that "*emphasis should be placed on repairing water-damaged areas to the building's infrastructure*". The report warned against adverse health effects and prescribed measures for addressing and eliminating the mould and made mention of the fact that the inspector found that there was an infestation of rats.

The tenant was asking for monetary compensation including \$2,350.00 rent abatement for the devaluation of the tenancy from September 7, 2008 until November 7, 2008, \$2,500.00, replacement costs of furnishings, \$198.69 moving costs, \$38.61 for cleaning supplies and reimbursement of \$100.00 for the fee paid in filing this application. The tenant also requested additional compensation of \$2,400.00 for the rent, security deposit and pet damage deposit paid for alternate accommodation.

The landlord testified that the residence had been thoroughly renovated prior to the tenant's arrival and that there was absolutely no sign of mould. The landlord testified that it was the landlord's opinion that the mould was caused by the tenant by the tenant allowing two large wet dogs to roam around the house. The landlord submitted verbal testimony and evidence that the mould did not occur through structural deficiencies in the building. The landlord's contractor supplied a written statement that the mould was "*caused by unclean living conditions by the tenant...*" and "*large wet dogs running around inside the house.*" The landlord had also contacted a company that specialized in mould and air testing. The landlord stated that it was difficult to arrange an assessment and the work was done as quickly as possible. Unfortunately the landlord served the report on the tenant a day prior to the hearing and was not able to submit the report into evidence in time for the hearing. The landlord was permitted to fax this evidence to the file immediately after the hearing, and I will rely on the verbal testimony given during the hearing regarding this report.

The testimony indicated that in November a mould technician hired by the landlord conducted initial inspections once the unit was vacant and found that the home did not show any signs of visible mould and that the moisture and humidity checks found no factors were present to promote mould growth. However, the unit was still treated with an “Ozone Clean” and tested afterwards. On December 1, 2008 the final inspection verified that *“the air quality results indicate that this home does not have any issues with regards to mold or moisture at the time of testing.”* The landlord testified that he concluded that the tenant may have brought dormant mould spores into the unit or otherwise caused the growth of mould. The landlord testified that the landlord had originally contemplated reimbursing the tenant for damage to the tenant’s mattress, but that was prior to it being officially confirmed that the building itself was not harbouring mould. The landlord now feels that the mould damage is not the landlord’s responsibility in any respect.

Analysis

In regards to an Applicant’s right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

Section 32 of the Act places reciprocal responsibilities on the parties in regards to maintaining the premises. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. A tenant is not required to make repairs for reasonable wear and tear.

The inspection that was done by the Health Authority on November 6, 2008, confirmed evidence of mould along the baseboards of the unit and I find as a fact that mould did

exist in the unit during the tenant's occupancy and that the tenant's furnishings were clearly damaged. I find that this satisfies element one of the test for damages. I also find that the results of the subsequent testing contracted by the landlord did not serve to cancel nor negate the earlier findings of the Health Inspector. Given that the company employed by the landlord first tested the rental unit after the mould had already been thoroughly cleaned up by the tenant, and did so in the absence of any inhabitants, before treating the unit and re-testing it on December 1, 2008, it is not surprising that the residence was found to be clear of mould. I find that an occupied unit naturally would generate more moisture in the air, with or without pets, through cooking, bathing, turning up the thermostat and other normal activities. Mould needs moisture to proliferate. So I must also conclude that there was obviously excessive moisture in the unit at that time. Naturally the environment would not be the same in a vacant unit as when it is occupied by a family as the mould was removed and less moisture was being generated when the company assessed the air. However it remains a mystery as to why, during the tenancy, the moisture either could not escape through adequate ventilation, or rose to a consistent level high enough to foster the serious growth of mould.

I note that the tenant testified that the tenant had never experienced episodes of mould during his tenancies at other locations in the past. I also note that the mould in this unit did not occur until September when temperatures outside dropped and the wet weather began. The topic of ventilation was not discussed during the hearing. However, I find that when a building is heated and the outside air is colder, the moisture from the air outside will gather wherever warmth is escaping. There is no way to know whether the recent renovation of the building had preserved an uncompromised vapour barrier inside the walls. I note however, that one of the photographs shows a gap in the wall where light from the outside is visibly penetrating through. Another shows a hole in the drywall and I see that no plastic vapour barrier is evident. A third shows a large crack in the exterior cement foundation. A photo of the kitchen wall and of a wall in the bathroom shows clear deterioration of the drywall that the tenant attributes to moisture.

One of the pictures of a corner with mould along the baseboard also shows a gap in the drywall where the two walls intersect. The photo of the tub drain verifies that it is not seated properly which may possibly indicate that water is not draining directly into the waste pipe, but, according to the tenant, allows water to leak under the house.

I find that on a balance of probabilities, the mould was largely caused by, if not entirely due to, deficiencies in the structure. I find that, even if the tenant's lifestyle caused more than the average amount of moisture in the air, had the house been properly insulated, sealed and ventilated, this would not have resulted in an unchecked proliferation of mould that is evident on the walls, furnishings and clothing.

I find that, while the tenant may or may not have contributed to the mould situation, the landlord has not fully met its responsibility under section 32 of the Act. Moreover, the manner in which the landlord handled the tenant's concerns was not consistent with the provisions contained in the Act.

The testimony of both parties confirmed that, in discussing the matter with the tenant, the landlord only gave the tenant two choices, neither of which was in compliance with the Act. Even if the landlord believed the tenant was at fault, the landlord still did not have the right under the Act to insist that the tenant remove his dogs nor that the tenant vacate the unit. Changing the terms of a tenancy requires mutual consent under section 14 of the Act and ending a tenancy can only be done in the manner prescribed in section 44 of the legislation. I find that the landlord's conduct amounted to a wrongful eviction of this tenant. I find that the tenant incurred damages and losses stemming from the landlord's violation of sections 32, 14(2) and 44(1) and that the landlord is liable under the Act to compensate the tenant for the resulting costs.

Accordingly I find that compensation for the following claims in the tenant's application is warranted

- \$433.91 for the box spring and mattress replacement

- \$100.00 for the used sofa and loveseat
- \$173.69 moving costs
- \$40.50 cleaning supplies
- \$470.00 rental abatement for two months at 20%
- \$100.00 for the filing fees.

I find that the tenant's claim for the bedroom furniture cannot be supported as the amount is unproven and there is a possibility that the tenant may have been able to mitigate the loss by having the wood surfaces cleaned and it therefore must be dismissed. I find that the claim for the rent and deposits in the amount of \$2,400.00 on the tenant's new residence is not an expense that would be the landlord's responsibility to compensate.

Conclusion

I find that the tenant is entitled to be compensated by the landlord in the amount of \$1,318.10 and I hereby grant a monetary order in favour of the tenant for this amount. This order must be served on the landlord and may be enforced through Small Claims Court if necessary.

The remainder of the tenant's application is dismissed.

Dated: December, 2008