



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC

Introduction

This hearing was scheduled in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement. Both parties participated in the hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, a copy of which is not in evidence, the tenancy began on October 1, 2009. Monthly rent of \$1,050.00 was payable on the first day of each month, and a security deposit of \$525.00 was collected. While the tenant vacated the unit on or about July 8, 2011, it was not until July 22, 2011 when she gave notice of her intent to end the tenancy effective August 31, 2011. Rent was paid to the end of August 2011. While the parties agree that a move-in condition inspection report was completed at the beginning of tenancy, and that a move-out condition inspection report was completed at the end of tenancy, a copy of neither was in evidence.

The tenant's claim arises principally out of her allegation that there was mould in the unit, that it had a deleterious impact on the health of her family and on the condition of some of her possessions, and that she is entitled to compensation as a result. Included in the tenant's evidence is a letter dated March 6, 2011 from a physician familiar with one of the tenant's children. In the letter the physician confirms that the child has asthma, and that "it is very important that [he] should not be exposed to mold in the home environment."

An annual property inspection of the subject unit was conducted and a report was written by date of October 22, 2010. Mention of mould in the inspection report is limited to the following:

tile tub surround is mouldy in areas on the grout and caulking – the tenant advises that she has bleached it to no avail. The mould spores are likely embedded in the grout and difficult to keep clean.

Following this, by e-mail dated December 29, 2010 the tenant brought the matter of “some water damage from the [upstairs] bathroom visible on the down stairs ceiling” to the attention of the landlord’s agent. She also queried whether “possible mould growth in flooring and bathroom wall” might be a concern. Both of these matters were related to a leaking upstairs toilet.

Later, by e-mail to the agent dated March 9, 2011, the tenant states in part that “Mould is visible on numerous spots growing on the wall into the corner of the dining room, Master Bedroom Bath Room and possibly alternant upstairs room.” In this e-mail the tenant further states:

We do not want our small children around mould. Also the friends of the owner came to look at the toilets last month and never got back to us. The toilets both have no liners and condense water. The bath room flooring is now mouldy behind the toilet from the constant water. We do mop it up daily.

The agent visited the home on March 16, 2011. The owner was informed and the agent got back to the tenant by e-mail dated March 17, 2011. Information and advice provided to the tenant included, but was not limited to, a suggestion that windows be left “open a crack” in certain rooms, and that the tenant use her de-humidifier. While the agent also stated that the owner’s handyman “would treat” the affected areas, the tenant was advised that problems “will recur if the moisture is not managed.” The agent also informed the tenant that the back yard hose was on and “the area around the foundation of the house was really, really wet.”

In an e-mail from the landlord to his agent dated March 19, 2001, in reference to the unit he states, in part, “Tired of fixing it.”

In an e-mail to the owner from the agent dated March 23, 2011, she states in part that after visiting the unit she was persuaded that beneath baseboards in the main bathroom, there was

lots of mould there possibly from the “sweating toilets” that [the handyman] has now replaced. On the lower floor in the laundry room, they pulled out some

exposed insulation above the washer and dryer and found no vapor barrier and some mold on the inside of the exterior walls.

So what I thought was a small moisture / humidity management issue is starting to look a little more problematic.

Later in March 2011 a second visit to the unit was undertaken by the agent. As well, the agent had a restoration consultant assess the humidity / moisture in the unit. Resulting recommendations were as follows:

- To treat the corners that were mouldy and the ceiling in the lower hall (water stained from the toilet leak) with Kilz
- Replace the bathroom floor and vinyl floor covering – at which time the toilet should be removed by a plumber and reinstalled with a new wax seal
- Treat (with Kilz) and repaint the bathroom above the tub surround.

The agent's contractor produced an "Estimate" dated April 26, 2011, for work arising from the above recommendations. It appears that by late July 2011, the aforementioned work had still not been completed. In part, this appears to have arisen from what the agent informed the owner was

a miscommunication regarding putting the work "on hold" but we were referring to the flooring replacement which he quoted at the same time. He will do his best to get in next week.

After the tenant had vacated the unit but prior to the time when tenancy formally ended, the tenant privately contracted with a company to "assess the presence of mould" at the unit. In a resulting report dated July 27, 2011, the Introduction – Inspection and Recommendations section reads in part as follows:

Interior inspection revealed mould in various areas; At the base of sliding door in dining room under rug. Large area of mould on bedroom walls and in wall cavity behind drywall. Possible mould was seen on tiles over bathtub and behind baseboard by toilet. There was water stains in various areas as well; Basement ceiling and behind drywall by plumbing stack. The Attic was inspected and found to be a probable cause for some of the mould in the building. There is a water stain in the insulation around the plumbing vent to roof showing signs of water leaking into attic and probably down into basement where water stains are seen by stack. The bathroom vent pipe is not insulated, causing

condensation to form and creating humidity in the attic. There was not enough ventilation at the soffits causing heat and humidity buildup, the temperature was 30 f hotter in the attic than the outside air at the time of testing. Mould was found on the roof sheeting in the attic and possibly the insulation as well, most was found by the area of the uninsulated vent pipe. Recommend insulating attic vent pipe and freeing up soffit ventilation and fixing any leaks into attic. Recommend mould remediation for attic area and rest of house.

The Results Discussion of the report states:

Airborne mould analytical results for living room area do not indicate an elevated level of contamination within the immediate area. The results of air sampling are provided in Table 1. More detail results are provided in attachments. The swab tests taken in the bedroom indicate a contamination of Aspergillus, - Hyphae, - Phoma, - Stachybotrys. The attic test indicates a contamination of botrytis, - ulocladium.

The Conclusion Recommendation section of the report reads:

Some of the moulds indicated have Allergic Potential. Recommend mould remediation from all areas.

In a follow up report by the same company dated August 12, 2011, the Results Discussion reads:

Airborne mould analytical results indicated an indoor contamination. The results of air sampling are provided in Table 1. More detail results are provided in attachments. Surface mould analytical results indicated an indoor contamination.

The Conclusion Recommendation section of the report reads:

Mould contamination is at elevated levels, recommend mould remediation.

The tenant took her concerns about the mould directly to the attention of the local health authority who, in turn, contacted the agent in July 2011. In short, while no site visit was undertaken by the health authority, the owner was instructed to deal with the mould. Some remedial work was undertaken in the unit following the end of tenancy, and while the landlord sought new renters, the unit was also advertised for sale and sold shortly thereafter.

It is understood that in response to the agent's request, the tenant provided a copy of the report(s) arising from the professional mould assessment.

While section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing, tentative discussion around settling the matter during the hearing did not lead to any resolution.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guideline, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Documentary evidence submitted by the parties is considerable and both parties addressed aspects of their submissions during the hearing. While all information provided has been considered, only the most relevant detail is referenced here.

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides as follows:

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit 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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 33 of the Act addresses **Emergency repairs**, and provides in part:

33(1) In this section, “**emergency repairs**” means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, ...

Section 28 of the Act speaks to **Protection of tenant’s right to quiet enjoyment**, and provides:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit in accordance with section 29 [*landlord’s right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline # 6 addresses “Right to Quiet Enjoyment,” and cites an example of a breach of the covenant of quiet enjoyment as follows:

- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Residential Tenancy Policy Guideline # 16 speaks to “Claims in Damages,” and provides in part:

A [dispute resolution officer] can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. A [dispute resolution officer] may also award “nominal damages,” which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss

has been proven, but they are an affirmation that there has been an infraction of a legal right.

In addition to other damages a [dispute resolution officer] may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered “pecuniary” losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered “non-pecuniary” losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer’s wilful or reckless indifferent behaviour. They are measured by the wronged person’s suffering.

Based on the documentary evidence and the affirmed testimony of the parties, the various aspects of the tenant’s claim and my findings around each are set out below.

\$7,350.00: reimbursement of all rent paid for the 7 month period from January to July 2011 (7 x \$1,050.00). As noted above, after commenting to the agent about problems associated with the upstairs toilet and “possible mould growth” in December 2010, replacement of the toilets was not completed until sometime in March 2011. I find that this delay arose in part, from a circular “chain of command” and expenditure approval process involving communication between the tenant, the agent, the owner, and the owner’s handyman. Accordingly, pursuant to this delay I find that the tenant suffered “mental distress” sufficient to establish entitlement for the 3 month period of January, February and March 2011 limited to **\$450.00***. This is calculated on the basis of an average of \$5.00 per day for each of the 90 days comprising this period (\$5.00 x 90).

Further, as noted above, there was a delay in completion of all work itemized in the “Estimate” dated April 26, 2011, prepared by the agent’s contractor, such that work appears not to have been completed by late July 2011 (certain painting and flooring replacement, for example). Following from this, I find that the tenant has established entitlement for the 4 month period of April, May, June and July 2011 which is limited to **\$610.00***. This is calculated on the basis of an average of \$5.00 per day for what is a total of 122 days during this period (\$5.00 x 122).

\$600.00: 1 damaged / discarded piece of a bedroom set. The tenant claims that her entire bedroom set was valued at approximately \$2,000.00. She submitted no receipts to support her recollection of the purchase value. The piece discarded was a 4 drawer oak dresser estimated to be valued at \$600.00. She stated that she purchased the set

new in 2005 or 2006. I find, then, that the age of the piece discarded was either 3 or 4 years old at the start of this tenancy. The tenant argues that the dresser was sufficiently damaged by mould to be beyond recovery.

While the agent takes the position that the mould problem was mainly the result of a “lack of air circulation in the room due to the placement of furniture on a cold outside wall,” the report on mould dated July 27, 2011 identifies a mould contamination in the bedroom. I find on a balance of probabilities that the tenant has established entitlement limited to **\$50.00***.

\$9.97*: *mould cleaner*. Pursuant to the results set out in the reports on mould dated July 27 and August 12, 2011, I find on a balance of probabilities that the tenant has established entitlement to recovery of the full amount claimed.

\$2,100.00: reimbursement of the last two months rent. During the hearing the tenant confirmed that the last 2 months of her tenancy were July and August 2011, and that the month of July is already included in the application for \$7,350.00, as above. In the result, the compensation sought here is limited to rent for the month of August 2011 which is \$1,050.00.

As previously noted, the tenant vacated the unit on or about July 8, 2011. Notice to end the tenancy was given on July 22, 2011, and the tenant's payment of rent for August appears to be a function of being required to give proper notice to end the tenancy. The agent testified that had a timely conversation taken place between the parties concerning rent due for August, some resolution might have been achieved. In the apparent absence of an agreement between the parties on this matter, I am unable to conclude that the tenant has established a statutory entitlement to recovery of any rent paid for August 2011. This aspect of the application is, therefore, hereby dismissed.

\$1,596.00: cost of home inspections (\$616.00 + \$980.00). I note that these inspections were contracted with a private company by the tenant without consultation with the owner or his agent. I also note that the tenant had already given notice of her intent to vacate the unit when she arranged for the initial inspection and the follow-up inspection. Notwithstanding the above, it appears that the results of these inspections led to the health authority's direct contact with the agent, which included an instruction to attend to the mould issue. I also note that while the health authority did not undertake a site visit or declare that the unit fell short of complying with the "health, safety and housing standards required by law," its involvement and instruction to the agent suggests that there was a question around whether the unit was entirely "suitable for occupation by a tenant." It is understood that delay in undertaking any remedial work in August arose, in part, from the tenant's reluctance to put her child's health at risk. Finally, it is understood that the landlord was a beneficiary of these inspections; specifically, the tenant ultimately provided copies of the reports to the landlord, and the landlord's remediation of problems identified presumably contributed to the sale of the unit.

While I find that the tenant has not met the burden of proving entitlement to a reduction in rent for August 2011, I find that she has succeeded in establishing entitlement limited to \$798.00*, which is half the total cost of the home inspections ($\$1,596.00 \div 2$).

\$150.00: cost of replacing discarded air purifier. While it is not difficult to understand the tenant's concern, in light of her child's asthma, that this device may not be sufficiently clean, there is no purchase receipt in evidence and the age of the device is unknown. I find on a balance of probabilities that this, in combination with the results of the mould reports, has enabled the tenant to establish entitlement limited to \$30.00.

\$360.00: moving cost (16 hours x \$22.50 per hour). This is calculated on the basis of "2 missed days of work" on the part of the father of the tenant's children in order to help relocate the tenant from the unit. There is no documentary evidence to support either the salary / wage rate or the time taken off work. Further, it appears that the tenant had

determined to end the tenancy in advance of any confirmation arising from inspection reports that mould was sufficiently serious to warrant remediation. I therefore find on a balance of probabilities, that the landlord ought not to bear any responsibility for the tenant's moving costs. Accordingly, this aspect of the application is hereby dismissed.

The tenant has not applied to recover the filing fee for this application.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenant in the amount of **\$1,947.97**. Should it be necessary, this Order may be served on the landlord, filed in the 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 *Residential Tenancy Act*.

Dated: January 19, 2012.

Residential Tenancy Branch