



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the tenants application for an Order for the landlord to return the tenants security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenants, the landlords and two advocates for the landlords attended the conference call hearing. The tenants and landlords gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenants provided extensive documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order to recover double the security deposit?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*, Regulations or tenancy agreement?

Background and Evidence

The parties agree that this tenancy started on May 01, 2010 for a fixed term of one year. Rent for this unit was \$1,400.00 per month due on the first day of each month. The tenants paid a security deposit of \$700.00 and a pet deposit of \$700.00 on March 24, 2012. At the start and end of the tenancy the parties conducted a walkthrough of the rental unit however no reports were completed by the landlord. The tenancy ended by mutual agreement on December 31, 2010 and the tenants gave the landlord their forwarding address in writing on January 01, 2011.

Security deposit

The tenant KM testifies that the landlord did not return their security and pet deposits within 15 allowable days after the landlord had received their forwarding address in writing. The tenant agrees the landlord sent them a cheque by mail for \$1,400.00 for the security and pet deposit and this was received by the tenants on January 19, 2011. Due to this the tenants seek to recover double the security deposit and claim the unpaid portion of \$1,400.00.

The landlord disputes the tenants claim. The landlord testifies that he posted the cheque for \$1,400.00 to the tenants on January 13, 2011 after giving the tenants the option of the landlord hand delivering the cheque to the tenants. The date on the envelope shows the day this was posted and it was received by the tenants on January 18, 2011. The landlord testifies that therefore he did return the deposit within 15 days because the house was left in a good condition.

Money owed or compensation for damage or loss

The tenants testify that the landlord misrepresented the quality and living standard of the house at the start of the tenancy. The tenants claim the landlord informed them that the house had never had previous mould issues yet the tenants testify that the attic clearly had pre-existing mould issues as shown by the photographs. The landlord also agreed to replace a window in the living room, replace a fence and gate and remove

hazardous compost. The tenants testify that the landlords also failed to notify the tenants that they had made extensive roof repairs when the landlords purchased the house a year earlier which were made due to water, mould and rot in the roof.

The tenants' testify that in the third week of October, 2010 the landlord SF stated to do some repairs to the foundations of the house. On October 30 the tenant LB found the interior of the main bedroom closet saturated in mould and the contents of that closet covered in mould including a three tier wooden shoe rack, all shoes on the rack, the floor, hanging shoe holders, laminate floor and all the clothes were saturated with a bad odor.

On November 02, 2010 the tenants discovered that the crawl space under the house was badly flooded with six to eight inches of water. The tenants notified the landlord who came to the house and explained to the tenants that the boards located at the top of the foundation were rotted out and letting water into the crawl space. The landlord informed the tenants that he would chip these boards out on the footings and replace them with a quick set cement patch which would resolve the flooding issue. The landlord started doing this work each night for four to six hours.

The tenants testify that by mid November, 2010 the crawl space continued to flood after each rainfall and the landlord then began pumping the water out daily from the crawl space. This took three to four hours each night and no additional repairs were started to prevent further flooding. The tenant LB testifies that the landlord had to be at the house every night for two months to pump the water out. The tenant testifies that she had to live with the hoses going through the house for that time and this work resulted in a loss of quiet enjoyment of the house.

The tenant testifies that by December 09, 2010 the crawl space was still flooding and the landlord did contact his insurance company on November 30, 2010 and a company was contacted to make the repairs. By December 16, 2010 the landlord said he would

come every day to pump the water if required including Christmas day and if the tenants were not happy then they should move out.

The tenants' testify that when a drainage company were called in the owner of that company informed the tenants that he was shocked at how much water was involved. He also informed the tenants that the previous existing drain tiles went around the house and then stopped offering nowhere for the captured water to go. New drains were put in around the house and the work was completed on December 23, 2010; however on Christmas day the tenant discovered another two inches of water in the crawl space. The tenants testify that their health has suffered as a result of the mould caused by the excessive moisture due to the flooding, LB is currently being treated for mould related health issues and KM is still suffering from congestion and breathing difficulties. The tenants testify that their dogs have also suffered health issues as a result of the mould.

The tenants' testify that they decided to move out of the rental house on Christmas day and their tenancy ended on December 31, 2010. The tenants therefore seek compensation for the following amounts for the enforced move:

Terasan gas, service transfer fee	\$25.00
Hydro hook up fee	\$13.89
Shaw hook up fee	\$24.95
Change of address for cheques	\$30.00
Moving company	\$404.60
Trailer rental	\$16.74
Canada Post change of address	44.80
Total claimed for the move	\$559.98

The tenants also seek compensation from the landlord for their belongings damaged by mould and loss of quiet enjoyment:

Bed damaged by mould	\$559.97
Shoes lost to mould	\$2,826.52

Shoe rack	\$44.78
Dry cleaning clothes due to mould smell	\$850.00
Leather belt replacement due to mould	\$100.00
Armour replacement (part of bedroom furniture)	\$559.97
Transfer station fee for box spring and mattress damaged by mould	\$81.00
Two months' rent for loss of quiet enjoyment	\$2,900.00
Total of claim for mould on personal property	\$7,922.24

The tenants seek additional costs associated in filing their application as follows:

Processing pictures for evidence	\$118.71
Supplies to produce evidence	\$4.35
Photo copies for evidence	\$6.59
Registered mail costs to send evidence	\$25.00
Application fee	\$100.00
Total of claim for additional costs	\$254.65

The tenant LB testifies that the bedroom floor had mould under the bed and although the tenant states she could not see the mould the box spring and mattress smelt musty and mouldy, the shoe rack was approximately four years old and was covered in mould; the leather belt had mould and despite attempts to clean this off with a bleach and water solution the mould could not be removed; the clothes all require dry cleaning; the armour is part of a bedroom suite and mould was found on the back of the drawers and the bottom of the Armour which could not be removed with bleach and water.

The tenants seek further compensation of two months' rent from the landlord due to having to live in these conditions with the remedial work taking place over two months and the health hazard due to the mould.

The landlord disputes the tenants claim that he did not provide a property in a condition fit for rental. The landlord SF testifies that he had no prior knowledge of the mould in the attic or that the crawl space was going to flood. The landlord testifies that they had just spent over \$20,000.00 renovating the property in 2010. The landlord testifies that as soon as he had knowledge of the flooding he attempted to identify the source of the flood water which could have been caused by one or two problems. The landlord testifies that he had to eliminate what the problems were to determine the root cause of the flooding. The landlord testifies that he first removed a front planter as he noticed that water was entering the crawl space from that area. However the problem remained.

The landlord testifies that he did not refuse to call in professionals and had contracted contractors to do this work once it was determined where the problem was. The landlord has provided a quote from a contractor dated December 10, 2010 and states this contractor was contacted prior to the quote being sent. The landlord testifies that he also called his insurance company on November 30, 2010 15 days after the tenants first informed the landlord. The landlord testifies that he did his due diligence in identifying and rectifying this flooding in the crawl space and it was the tenants' choice to end the tenancy and move from the rental unit. The landlord states he should not therefore be held responsible for the tenants moving costs.

The landlord testifies that the tenants showed the landlord a bag of shoes covered in mould. The tenants had stored these outside the unit and had made no attempt to clean the mould from them therefore mitigating their loss. The landlord testifies that he had told the tenants he would compensate them for the shoes by reducing their rent by \$250.00 for two months; however the tenants were not happy with this offer.

The tenants argue that they did not store the shoes in a plastic bag but in boxes and they were left outside and not cleaned due to health concerns if the tenants exposed themselves to the mould. The tenants argue that the landlord was contacted at the beginning of November not November 15 as stated by the landlord.

The tenant testifies that the landlord offered to compensate the tenants \$300.00 for their shoes but the landlord asked the tenant if they had insurance for their belongings. The tenant testifies that they did have renters insurance but had a \$1,000.00 deductible and they did not want to claim against their own insurance.

The landlords advocate asks the tenant if the tenant contacted a professional restoration company for advice as to how to handle the mould or water damage. The tenant LB responds that she did speak to someone at a restoration company and was told that everything had to be cleaned even if there was no evidence of mould spores. The tenants advocate asks the tenants if they spoke to a company dealing with mould. The tenant LB responds that she did speak to someone but they wanted to come and take samples and this would have cost the tenants a large amount of money so they did not follow through.

The landlord testifies that he had informed the tenants that his insurance company recommended that the tenants call their insurance company. However the tenants did not do so. The landlord questions the tenants about their shoes and how they calculated the amount claimed and how many pairs of shoes make up the claim because some of the tenants photographs of the shoes are duplicated. The tenants respond that they do not have receipts for the shoes, some of the shoes are old, some are a few years old and some are newer. The tenants argue that they asked the landlords advice on how to clean the shoes but he did not get back to them. The tenants have based their claim on replacement costs for the shoes as shown on each photograph.

The arbitrator questions the tenants and asks the tenant how frequently was this closet used in which the shoes and clothes were stored. Did the tenants not recognise a

moisture problem or mould growing. The tenant LB responds that she did not go into this closet frequently as it was used to store dress clothes. LB testifies that she did not notice the mould until she smelt a musty smell and then went into the closet and found mould on some cowboy boots.

The landlord testifies that there was mould found in the attic space. The condensation formed in the house due to the water in the crawl space can cause mould in the attic. The landlord testifies that he was unaware that the attic had mould prior to this tenancy. The landlord has provided articles concerning mould in attic spaces which state this does not contribute to health issues.

The landlord testifies that he has owned this house since 2003 not since 2009 as suggested by the tenants. The landlord disputes that he was aware of any mould issues or flooding in the house prior to these tenants occupancy. The landlord testifies that he was not negligent in dealing with the flooding and acted in a timely manner.

The landlords advocate who is also the landlords insurance adjuster makes a comment that as insurers they would not touch someone else's property that was covered under a separate insurance and it would have been the tenants responsibility to contact their insurance company and file a claim with them.

The landlord draws attention to the tenants written statements and claims that 16 of these statements are either false or do not add up. The landlord refers to his own documentary evidence and states his receipts prove that he acted in a timely manner to resolve the issues with flooding. The landlord questions the tenants as to why it took them nearly two years to file this claim. The tenant LB responds that she had an injury which prevented her filing sooner but states they have filed within the time frame.

Order for the landlord to comply with the Act.

The tenants seek an Order for the landlord to comply with the *Act* with regards to payment of double the security and pet deposit as it was not returned within 15 days of

receiving their forwarding address. The tenants also seek an Order for the landlord to comply with the *Act* with regards to the maintenance and upkeep of the property and ensure the property is fit for occupation.

The landlords dispute that they have not complied with any section of the *Act*.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regards to the tenants claim for double the security and pet deposits and for the double portion of those deposits to the sum of \$1,400.00; the *Act* states that a landlord has 15 days to return the security and pet deposit after receiving the tenants forwarding address in writing. As the tenants gave their forwarding address in writing to the landlord on January 01, 2011 the landlord had until January 16, 2011 to return the tenants security and pet deposits. The parties agree that the cheque was posted on January 13, 2011. The tenants argue that they did not receive the cheque until after the 15 days had expired. However, as long as the landlord has sent the cheque within the 15 days then this is permitted under the *Act*. Therefore, I find the landlords did return the security and pet deposit in full within the allowable 15 days. This section of the tenants claim is therefore dismissed.

With regard to the tenants claim for money owed or compensation for damage or loss; I have applied a test used for damage or loss claims to determine if the claimants have met the burden of proof in this matter:

- Proof that the damage or loss exists;
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;

- Proof that the claimant followed S. 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 to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or 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.

The tenants have established that there was flooding in the crawl space and some mould in the attic and on their shoes and shoe rack. However, the tenants have not established that the damage or loss happened solely because of the actions or neglect of the landlord in violation of the *Act* or agreement. The tenants have not shown that this was a pre-existing problem that the landlord was aware of and have not shown that the landlords did not act in a responsible and timely manner to protect both their property and the tenants' personal belongings..Therefore, the tenants have not met the burden of proof required for this part of the test.

The tenants seek compensation due to the loss of quiet enjoyment due to the level of work going on to remedy the flood problem for two months. When work of this nature has to be completed to protect the landlords property and investment than the tenants must expect some disruption to their daily living. Temporary Discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. The landlord has a responsibility to repair and maintain the rental unit and the reasonable efforts of a landlord to perform required repairs and maintenance cannot form the basis for a claim for loss of quiet enjoyment. Therefore the tenants have not met the burden of proof required for this part of the test.

I further find that the tenants have not provided verification of the actual amounts to replace all their claimed for belongings or that all the claimed for belongings were actually damaged by mould. Therefore I find the tenants have not met the burden of proof required for this part of the test.

I find the tenants have not established how they mitigated their loss by what steps they took to clean the mould from their shoes as soon as it was noticed. I further find that although the tenants had their own tenants insurance, as established at the hearing, the tenants failed to notify their own insurance company for which there was a \$1,000.00 deductible which would have minimized their loss. Therefore I find the tenants have not met the burden of proof required for this part of the test.

With regard to the tenants claim for associated costs incurred in filing this application; there is no provision under the *Act* for costs awarded for a party to produce evidence for a hearing or for registered mail costs.

Consequently I dismiss the tenants' application for a Monetary Order for money owed or compensation for damage or loss.

With regards to the tenants claim for an Order for the landlord to comply with the *Act*, as the tenants have not shown which section of the *Act* the landlord has failed to comply with. I further find that any Orders made under this section of the tenants claim after a tenancy has ended would not be enforceable and I dismiss this section of the tenants claim.

As the tenants have been unsuccessful with their claim I find the tenants must bear the cost of filing their own application.

Conclusion

The tenants' application is dismissed in its entirety 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: January 25, 2013

Residential Tenancy Branch

