



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenants: MNDC, FF

For the landlord: MNSD, MNR, MND, MNDC, FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the Residential Tenancy Act (the "Act").

The tenants applied for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The landlord applied for authority to retain the tenants' security deposit, a monetary order for unpaid rent, damage to the rental unit and for money owed or compensation for damage or loss and for recovery of the filing fee.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

I have reviewed the oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

1. Are the tenants entitled to a monetary order and to recover the filing fee?
2. Is the landlord entitled to a monetary order, to authority to retain the tenants' security deposit, and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy began on June 1, 2012, monthly rent was \$825, and the tenants paid a security deposit of \$412.50 at the beginning of the tenancy.

The tenancy agreement shows that the tenancy was on a one year, fixed term basis, set to expire on May 31, 2013. The evidence shows that the tenancy ended by the tenants' move from the rental unit on or about February 17, 2013.

Tenants' application-

The tenants' monetary claim is in the amount of \$3000, as follows:

Ruined furniture & clothing	\$1000
Insurance deductible	\$1000
Security deposit	\$450
Moving expenses	\$550

The tenant's relevant evidence included 37 photographs of the state of the rental unit, a condition inspection report, a written summary explaining their application, a note from the female tenant's physician, an insurance declaration page, communication from the landlord regarding moving into another rental unit managed by the landlord in the same residential property, and some receipts for some of the costs claimed.

In support of their application, the tenants submitted that in early December 2012, they noticed that mould began developing in the rental unit, at which time they informed the landlord. The tenants submitted that despite their initial and ongoing requests and notices to the landlord, the landlord failed to properly address the problem.

The tenants testified that the property manager attended the rental unit after many requests and said that she would report the issue to the head office. The representative attended the rental unit on December 19, and surmised that the problem was lack of circulation. The representative advised the tenants to open the windows and turn up the heat. The tenants said that the bathroom and kitchen hood fans did not work.

The tenants contended that on another occasion, the contractor for the landlord came around and said he did not know what was going on to cause the mould, and then just left.

The tenants said that the landlord explored the possibility of the tenants moving into another rental unit, but that when the current tenant in that unit moved out, they notice mould there.

The tenants said that as the landlord failed to address the mould problem, they were forced to move as the female tenant's health was being compromised.

In response to my question concerning the tenants' specific items listed in their claim, the tenants testified that it was necessary to dispose of some furniture and other possessions as the mould had grown on and covered the items, rendering them unusable.

As to the insurance deductible, the tenant confirmed that they had not made a claim on their renters' insurance policy as payment of the deductible should be the landlord's responsibility due to their lack of response to the mould.

The tenants submitted that due to no fault of their own, they were forced to move, and should be granted their security deposit.

The tenants said that they incurred costs in moving, such as having friends move them, paying for the gasoline, and hiring a moving truck.

Landlord's response to the tenants' application-

In response the property manager acknowledged that mould was an issue, but that when she attended the rental unit, there were cool temperatures. The property manager acknowledged that she brought in their contractor, who was not able to figure out what the problem was.

The property manager said that the tenants were given bottles of bleach to help with the mould issue.

Additionally, the landlord's agent said that new tenants have moved into the rental unit, have been there for 2 ½ months, and have had no issues with mould.

Landlord's application-

The landlord's monetary claim is in the amount of \$2150.80, as follows:

February rent	\$825
February late fee	\$20
Carpet cleaning	\$100.80
Drape/blind cleaning	\$30
Liquidated damages	\$300
Loss of revenue, March	\$825
Filing fee	\$50

The landlord's relevant evidence included the tenancy agreement, proof of advertising the rental unit post tenancy, a carpet cleaning invoice, and a pay authorization for suite cleaning.

The landlord submitted that the rent was not paid for February and that the tenants are responsible for \$825 pursuant to the terms of the tenancy agreement. As no rent was

paid, the tenants owe a late fee, pursuant to the tenancy agreement, according to the landlord.

The landlord contended that they mitigated their loss of revenue through the end of the fixed term by advertising the rental unit and were successful, effective April 1, 2013; however as the tenants left early, they are responsible for the March rent, according to the landlord.

The landlord claims the liquidated damages due to the tenants ending the fixed term tenancy early, as per the tenancy agreement.

The landlord argued that the condition of the rental unit at the end of the tenancy required cleaning.

Tenants' response to the landlord application-

The tenants argued that they had no choice other than to leave, due to the mould in the rental unit.

In response to my question, the tenants said that the landlord was provided their written forwarding address in their application for dispute resolution.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a monetary claim for damage or loss as provided for in sections 7 and 67 of the Act or tenancy agreement, the claiming party, both parties in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Tenants' application-

Ruined furniture & clothing- Although I accept that mould was present on the tenants' furniture and other personal property through no fault of the tenants, I was presented no evidence from the tenants that it was necessary to destroy or dispose of their furniture or personal property. For instance, it appears from the tenants' photographic evidence

that the mould on the hard surfaces could be cleaned and I see no reason the clothes could not be washed with hot water and bleach.

Additionally, I was also presented no evidence of the value of any items which the tenants claimed were ruined.

I therefore find the tenants submitted insufficient evidence to prove their claim for ruined furniture and clothing and I dismiss their claim for \$1000.

Insurance deductible-The tenants presented no evidence that they have sustained a loss by paying an insurance deductible, and therefore have not met the third step of their burden of proof. I therefore dismiss their claim for \$1000.

Security deposit-The landlord has claimed against the tenants' security deposit and the tenants' claim for a return of their security deposit will be addressed later in this Decision.

Moving costs- I find no legal basis for awarding the tenants costs of moving as the tenants made choices in how they chose to move. Additionally the tenants failed to submit proof of incurring such expense as stated, such as renting a truck and paying their friends to help in moving.

I therefore dismiss their claim for \$550.

Landlord's Application

Loss of revenue for February and March 2013 - I accept that the tenants ended their tenancy early by vacating the rental unit as of February 17, 2013 in violation of section 45 (2) of the Act and tenancy agreement. The tenants were required to end this tenancy by giving the landlord written notice of at least 1 clear calendar month at least a day prior to the day rent is owed, no earlier than the end of the fixed term.

Section 45 (3) of the Residential Tenancy Act, however, authorizes a tenant to end a tenancy by giving proper notice if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure.

The tenants argued that they were entitled to end this tenancy early due to the landlord's failure to address their issues regarding the mould growth, which they believed placed their health and safety in jeopardy.

I accept the tenants' arguments. I find there is no dispute that the tenants notified the landlord of the mould on a continuing basis, as confirmed by the parties. I also find that the evidence presented by both parties overwhelmingly favoured the tenants' position, due to the landlord's statement that the maintenance person said that mould was an issue and that he did not know what was causing the mould. There was no evidence

that the landlord attempted to resolve the problem within the structure of the rental unit. I find the offer of bleach and another rental unit to be an unacceptable response to the tenants' legitimate requests.

Additionally, I was particularly influenced by the move-out condition inspection report as prepared by the landlord, which in part, stated "mould rampant in the suite →to rectify with repair" and "tenants did not want to transfer, was left no choice due to mould."

I was also influenced by the tenants' photographic evidence, which convinced me that the mould was of a structural nature, and not due to lack of cleanliness.

Section 32 of the Act requires a landlord to provide and maintain a residential property in a state that complies with the health, safety and housing standards required by law and having regard for the age, character and location of the rental unit, make it suitable for occupation by a tenant. I find the landlord failed to maintain the residential property in such a state.

Due to the above, I find the landlord fundamentally breached the tenancy agreement and the Act. I find the only remedy was to end the tenancy.

Under sections 62 and 44(1)(f) of the Act, I order the tenancy ended effective on February 17, 2013, the date the tenants vacated the rental unit.

As I have found that the landlord's fundamental breach of the Act and the tenancy agreement caused the tenancy to end on February 17, 2013, I find the landlord is entitled to prorated unpaid rent for the period of February 1-17, in the amount of \$461.04 ($\$825 \times 12 \text{ months} = \$9900 \text{ yearly rent} \div 365 \text{ days} = \$27.12 \text{ daily rate} \times 17 \text{ days} = \461.04), but that the landlord is not entitled to further unpaid rent for February or loss of rent revenue for March 2013.

I find the landlord has proven a monetary claim of \$461.04 for unpaid rent for February 1-17, 2013, and dismiss their claim for the balance of February, the late payment fee for \$20, and for loss of rent revenue for March, without leave to reapply.

Carpet cleaning/ drape/blind cleaning-In reviewing the move-out condition inspection report, the landlord wrote as to "total hours cleaning," there was "no charge to tenant." In considering this statement written by the landlord along with the extensive mould in the rental unit, I do not find that the landlord provided sufficient evidence that the tenants were responsible for any cleaning in the rental unit. I therefore dismiss their monetary claim for \$100.80 for carpet cleaning and \$30 for drape/blind cleaning, without leave to reapply.

Liquidated damages-As I have found that the tenancy ended due to the landlord's fundamental breach of the Act and the tenancy agreement, I find the landlord is not entitled to liquidated damages and I dismiss their monetary claim for \$300, without leave to reapply.

Due to the above I find the landlord has proven an entitlement to a monetary award of \$461.04.

I have not awarded either party recovery of the filing fee as I have found merit with both applications.

Conclusion

The landlord has proven a monetary claim of \$461.04 for unpaid rent for February 1-17, 2013.

I direct the landlord to retain the tenants' security deposit of \$412.50 in partial satisfaction of their monetary award, and I grant the landlord a final, legally binding monetary order for the balance due in the amount of \$48.54, which I have enclosed with the landlord's Decision.

As I have directed the landlord to retain the tenants' security deposit, the tenants' request for a return of their security deposit is denied.

Should the tenants fail to pay the landlord this amount without delay after being served the order, the monetary order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an Order of that Court. The tenants are advised the costs of such enforcement are recoverable from the tenants.

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* and is being mailed to both the applicant and the respondent.

Dated: May 8, 2013

Residential Tenancy Branch