

DECISION

Dispute Codes

For the tenants – MNDC, FF

For the landlords – MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement; other issues; and to recover the filing fee from the tenants for the cost of this application.

The tenants and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The hearing was reconvened to allow the tenant opportunity to provide their photographic evidence to the landlord. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party and the parties confirmed receipt of evidence. 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 for money owed or compensation for damage or loss?

- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on October 01, 2012 although the tenants were allowed to move in a few days prior to this. This was a fixed term tenancy which was due to expire on June 30, 2013. Rent for this unit was \$1,250.00 per month which was reduced to \$1,200.00 to allow for the additional costs to heat the unit.

The tenants' application

The tenants testify that they moved into the unit and everything appeared to be fine until heavy rains fell in November. The tenants' testify that they noticed the growth of mould in the house and soon everything became covered in mould including their furniture, clothing, shoes and bags. The tenants' testify that even the table had a growth of mould even though it was not placed against an outside wall and the drawers to some of their furniture was so damp they became swollen and would not open. The tenants' testify that anything along the outer walls and closets suffered worst but soon other items became contaminated with mould. The tenants' testify that the pictures they have provided in evidence of the mould were taken after the tenants had first cleaned mould from everything and then a week later the mould had grown back.

The tenants testify that the female tenant and their daughter became sick with respiratory problems and red eyes and after visiting the doctor the doctor advised the family to move from the rental unit due to the mould. The tenants testify that they have not provided any evidence from the doctor at this point as their daughter has had an x-ray and is waiting to see a specialist.

The tenants testify that they at first spoke to the landlord's agents (who are the parents of one of the landlords) as the landlords live in another province. The landlord's father agreed and said he could understand why the tenants could not live in the unit. After the

tenants moved out and took some personal property on December 06, 2012 the landlord's father put in two dehumidifiers. The tenants' testify that they removed the remainder of their belongings by December 23, 2012. The tenants testify that they also informed the landlords by text message about the mould and they seemed to be very concerned but stated they could not do anything until they returned to the area on December 22, 2012. The tenants testify that the landlords photographs must have been taken after someone had attempted to clean up some of the mould as the landlords photographs show the same mould issues but fainter then that shown on the same door on the tenants photographs.

The tenants seek to recover rent paid for December, 2012 of \$1,200.00 for not being able to reside in the unit. The tenants also seek to recover moving expenses of \$100.00 for a moving van; \$100.00 for a storage locker; \$50.00 for gas; \$500.00 for time off work to move and living costs and \$500.00 for pain and suffering of moving over the holiday period.

The tenants also seek to recover compensation from the landlords for personal belongings damaged by the mould.

Two mattress damaged by mould \$1,500.00

Assorted clothing \$200.00

Damage to a dresser \$100.00

The tenants seek to recover a further \$90.00 for the increase in Hydro costs as the landlords agent entered the home and turned up the heat and ran two industrial dehumidifiers and fans in the home which increased the tenants' Hydro costs after they had vacated the home.

The landlord attending agrees that there was some minor mould issues in the unit during the previous tenants tenancy. The tenants had been notified of these issues but were keen to rent the unit. The landlord testifies that the previous tenant did not suffer any health issues and had a child with asthma. The previous tenant has provided an e-mail to the landlords, shown in evidence, which alludes to surface mould issues.

The landlord testifies that the tenants had informed the landlords' parents that they had previously stored their furniture in a barn and suggests that the tenants' furniture was already contaminated with mould spores prior to the tenants moving into the unit.

The tenants dispute the landlords claim. The tenants testify that there was not a barn at their previous tenancy and they did not tell the landlords parents that they had stored furniture in a barn. The tenants' testify that they had some furniture in their previous home with them and some was stored in a heated storage facility.

The landlord testifies that a few days before December 06, 2012 the tenants informed the landlord that the home was warm and muggy. The landlord testifies that they asked the tenants to call the landlords father to work out a time for the landlords father to come and look at the house. The landlord testifies that her father did not hear from the tenants' straight away and when they did contact the landlords' father they set up a time for him to go to the house. The landlord testifies that her father contacted the contractor who had done some work previously on the house to go and investigate to ensure there was not a problem with his work. The landlord testifies that on December 06, 2012 they received a call from the tenants saying they were going to be moving out.

The landlord testifies that a few days later her father went to the house and installed some dehumidifiers to extract the moisture and the contractor came to look at the house. It was determined that there was some surface mould and they smelt the tenants' blankets and mattress and there was no evidence of mould on these items. The landlord did determine that there was a hole on the side of the foundations which allowed water to wick up into one closet. The landlord testifies that they cut sections of drywall away in different places and in all but one place there was no evidence of mould behind the drywall. In the one area in the closet there was some mould between the drywall and the vapour barrier where the moisture had wicked up.

The landlord testifies that she had told the tenants to leave that closet door open to prevent moisture build up in the closet. The landlord testifies that two bathroom fans

were added and ventilation was added to the exterior walls. The landlord testifies that with all this remedial work has now resolved the moisture problems in the house and the tenants did not have to move from the property but should have allowed the landlords time to remedy the mould issues. The dehumidifiers were only in the house for one and two weeks respectively and the rest of the work was done within a few days.

The landlord disputes the tenants claim for damaged items, moving costs, rent and Hydro costs. The landlord testifies that the tenants did not have to move out and therefore any moving costs should not be the landlords' responsibility. The landlord also claims that they did not turn up the heat in the unit after the tenants vacated and of the two dehumidifiers only one was an industrial one which was on intermittently for a week and the other dehumidifier was also on and off for a week.

The tenants testify that the landlords made an offer to the tenants to prorate the rent but the tenants wanted a professional to look at the mould to determine that the house was safe to live in. The tenants testify that they later found out that the landlords did not obtain permits to build the addition to the house and the tenants just wanted someone to tell them that the house was safe to live in however the landlords would not do this.

The landlord testifies that they did call three professional mould companies. One company informed the landlord that they would do a test for mould spores and compare the amount of spores both in and outside the house. The landlord testifies that as they thought the tenants would not be satisfied with that they did not want to pay out for a professional mould test.

The landlords' application

The landlord testifies that the tenants moved from the unit without proper notice and in breach of the fixed term lease. The landlord testifies that the house was advertised for rent and was re-rented for February. The landlords therefore seek to recover a loss of rental income for January, 2013 of \$1,200.00. The landlord testifies that the tenant did

not give the landlord enough time to remedy this mould issue before they decided to move out.

The landlords seek to recover additional costs incurred in preparation for this hearing of \$150.00. These costs were incurred for Canada postage, long distance charges for information, photocopying and for printing photographs.

The tenants dispute the landlords claim and testify that they had to move from the house due to the mould as the landlords did not comply with the *Act* in ensuring the house was fit for occupation.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. 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 claimant has 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.

In most instances one party's violation of the *Act* does not excuse the violations committed by the other party, nor render the other party immune from liability for their own transgressions. However, in this instance I find that provision of a rental unit suitable for occupation was a material term of the contract and it appears that the rental unit had sufficient mould contained within it that proved to be a potential serious health risk to the tenants and this mould was increasing over time rather than decreasing. The landlords were notified of the mould at the beginning of December and no remedy was provided until after December 23 when the tenants had made the decision to vacate the unit on their doctor's advice. Mould is proven to be a health risk and as such it is my decision that the tenants have shown that the amount of mould in the unit gave the tenant sufficient cause to vacate the rental unit. I therefore find the tenants are entitled to recover some rent paid for December, 2012. However as the tenants did not vacate until December 06, 2012 I have reduced their claim by six days worth of rent. The tenants are therefore entitled to recover the amount of **\$967.74**.

With regard to the tenants claim for compensation for moving expensive; the tenants have provided no evidence to show the actual costs incurred in moving such as a receipt or wage slips for a moving van, storage locker, gas, or lost wages. I therefore must limit the tenants claim to the sum of **\$200.00** for moving costs.

With regard to the tenants claim for pain and suffering of \$500.00 I find the tenants had to move house at short notice and stay with relatives rather than endure living in the rental unit with mould. It was unfortunate that this occurred over the Christmas holiday period however I find that the tenants are entitled to recover some compensation for this pain and suffering. It is difficult to put a figure on what compensation should be awarded in this matter and I find the amount claimed to be fairly high. I therefore award the tenants the sum of **\$300.00** for their pain and suffering endured in having to move from the rental unit as a result of the mould issues.

With regard to the tenants claim of \$1,800.00 for damage to two beds, clothing and a dresser; the tenants have provided no information as to how old these items were or as to the replacement costs for these items. I do however find that the tenants evidence is compelling that their beds, clothing and dresser where damaged by mould. An arbitrator 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. An arbitrator 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. As such it is my decision that the tenants are entitled to some monetary compensation for the damage caused by the mould to two beds, clothing and a dresser and a nominal monetary award will be issued to the tenants for the sum of **\$800.00**.

With regard to the tenants claim for compensation for higher Hydro costs. The tenants have provided no evidence that the Hydro costs did increase as a result of the running of dehumidifiers in the rental unit or that the landlord’s agent turned up the heating. I therefore find the tenants have failed to meet the test for damages and as such this section of the tenants claim is dismissed without leave to reapply.

As the tenants have been partially successful with this claim I find the tenants are entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the tenants pursuant to s. 67 of the *Act* for the following amount:

Prorated rent for December	\$967.74
Moving costs	\$200.00
Pain and suffering	\$300.00
Damage to belongings	\$800.00
Filing fee	\$50.00
Total amount due to the tenants	\$2,317.74

With regard to the landlords claim for money owed or compensation for a loss of rent for January; as I have determined that the landlords breached the *Act* by not providing a rental unit fit for occupation and although the landlord did take steps to remedy this situation after the tenants vacated the rental unit I find a tenants cannot be expected to live in a unit which could potentially be harmful to a tenants health. I therefore find the tenants were entitled to end the tenancy without proper notice despite the fact that this was a fixed term lease. I therefore dismiss the landlords' application for a loss of rental income on these grounds without leave to reapply.

With regards to the landlords claim for costs for Canada postage, long distance charges, photocopies and printing of photographs. There is no provision under the *Act* for costs of this nature to be awarded to an applicant. I therefore dismiss this section of the landlords claim without leave to reapply.

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

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,317.74**. The order must be served on the landlords and is enforceable through the Provincial Court 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: July 09, 2013

Residential Tenancy Branch

