



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, CNR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for:

- an Order of Possession for Unpaid Rent or Utilities;
- a monetary Order for unpaid rent or utilities;
- a monetary Order for money owed or compensation for damage or loss;
- to retain all or part of the security deposit;
- to recover the fee for filing this Application for Dispute Resolution; and
- “other”.

At the hearing the Landlord withdrew the application for an Order of Possession, as the rental unit has been vacated.

The Landlord stated that on April 18, 2015 the Application for Dispute Resolution, the Notice of Hearing and 95 pages of documents the Landlord wishes to rely upon as evidence were personally served to the male Tenant. The Tenant acknowledged receipt of these documents. The Tenant stated that he gave the documents to the female Tenant and that he is representing her at these proceedings. As the Tenant acknowledged receipt of the documents, they were accepted as evidence for these proceedings.

The Tenant filed an Application for Dispute Resolution, in which the Tenant applied:

- to cancel a Notice to End Tenancy for Unpaid Rent or Utilities;
- for the return of the security deposit;

- for a monetary Order for money owed or compensation for damage or loss;
- for an Order requiring the Landlord to comply with the *Residential Tenancy Act* (Act) or the tenancy agreement;
- for an Order requiring the Landlord to make repairs/emergency repairs;
- for authority to reduce the rent;
- to recover the fee for filing this Application for Dispute Resolution; and
- for “other”.

At the hearing the Tenant withdrew the application to cancel a Notice to End Tenancy for Unpaid Rent, as the rental unit has been vacated. As the rental unit has been vacated, I find there is no need to consider the Tenant’s application for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement; for an Order requiring the Landlord to make repairs/emergency repairs; or for authority to reduce the rent.

The Tenant stated that on March 26, 2015 the Application for Dispute Resolution and the Notice of Hearing were personally served to both Landlords. The Landlord acknowledged receipt of these documents.

The Tenant stated that an amended Application for Dispute Resolution and 225 pages of documents plus a CD the Tenant wishes to rely upon as evidence were personally delivered to the office of the Landlord’s Legal Counsel. The Landlord’s Legal Counsel acknowledged receiving this evidence on April 16, 2015 and it was accepted as evidence for these proceedings.

The Tenant stated that 8 additional pages the Tenant wishes to rely upon as evidence were personally delivered to the office of the Landlord’s Legal Counsel. The Landlord’s Legal Counsel acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

I note that a significant amount of documentary evidence was presented for these proceedings, all of which has been reviewed. Only evidence that was relevant to my decision will be referenced in this decision.

Issue(s) to be Decided

Is the Landlord entitled to compensation for unpaid rent, unpaid utilities, a late fee, the cost of inspecting the rental unit, and legal fees?

Is the Tenant entitled to compensation for living with mould in the rental unit and costs associated to vacating the rental unit?

Should the security deposit be retained by the Landlord or returned to the Tenant?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on August 27, 2014;
- they entered into a fixed term tenancy agreement, the fixed term of which was to end on August 31, 2015;
- the Tenant was required to pay monthly rent of \$1,360.00 by the first day of each month;
- the Tenant paid a security deposit of \$680.00;
- the Tenant paid a pet damage deposit of \$680.00; and
- the Landlord served the Tenant with a Ten Day Notice to End Tenancy for Unpaid Rent, dated April 09, 2015, which declared that the Tenant must vacate the rental unit by April 22, 2015.

The Landlord and the Tenant agree that the on March 17, 2015 the Tenant advised the Landlord that there was mould in the rental unit. The Landlord stated that her husband went to the rental unit on March 18, 2015 and did not conclude there was a problem with mould.

The Landlord stated that on March 26, 2015 the rental unit was inspected by a restoration company. A copy of the inspection report was submitted in evidence, which shows the rental unit was tested in five areas and that all of the tests indicated there was no bacteria present.

The Landlord stated that the inspector tested areas the Tenant indicated may be impacted by mould, with the exception of the attic. She stated that the attic was not tested as they did not deem it safe, for structural reasons, for the inspector to enter the attic.

The Tenant questioned the validity of the inspection on March 26, 2015 because:

- the inspector did not provide the Tenant with a business card
- the inspector only tested a few areas, some of which were not areas of concern
- the inspector did not test in the attic, which was an area of significant concern.

The Tenant stated that he has experience in the construction industry and it is his opinion that there is mould in the rental unit.

The Tenant stated that he and all of the people living in the rental unit experienced significant medical issues while living in the rental unit, which his medical practitioner believes was associated to mould. He stated that an elderly relative of the female Tenant, who moved into the rental unit, passed away shortly after moving into the unit. No medical evidence was submitted to show that the medical condition of anyone that lived in the unit was related to the presence of mould.

The Tenant stated that he hired a restoration company to inspect the rental unit, which inspected the unit on March 23, 2015. A copy of this report was submitted in evidence, which indicates, in part:

- drywall tested in various locations were dry;
- mould was visible on the window sill, which was wet, in two bathrooms;
- mould was visible in the shower area and moisture was streaking on the walls in one bathroom;
- the attic lacks ventilation, which could cause condensation;
- both bathrooms lack ventilation, which causes moisture to develop; and
- the aluminum window frames in the bathroom have broken seals which allow condensation to develop on the sills and cause mould.

The person inspecting the unit on behalf of the Tenant recommended that:

- the visible mould be remediated to ensure the health and safety of the occupants;
- the Tenant should relocate until repairs are complete, for their own health and safety;
- the bathroom windows and sills should be replaced;
- ventilation fans should be installed in both bathrooms;
- the shower should be re-caulked;
- the attic should be inspected to ensure adequate ventilation; and
- the roof sheathing should be replaced.

The Landlord contends that the report conducted on behalf of the Landlord has more validity, as it is based on chemical tests, rather than a visual inspection. Legal counsel specifically notes that the person inspecting the rental unit on behalf of the Tenant clarifies that the conclusions are the author's opinion and that a certified hygienist should be consulted.

The Tenant stated that the rental unit was inspected by a local health authority on March 30, 2015. This report indicates that a visual examination indicates, in part, that mould appears to be present on some building surfaces and that there was evidence of excess surface moisture in the walls and ceiling of two bathrooms. The report stipulates that the presence of mould does not necessarily indicate a health hazard, although some species can potentially cause harm to humans.

The Tenant submitted several photographs of the rental unit which the Tenant contends demonstrate there is mould in several locations in the rental unit.

The Tenant contends that former occupants of the rental unit also informed the Landlord about problems with moisture in the rental unit. The Tenant submitted documentation from a former occupant of the unit, which corroborates this submission.

The Landlord stated that she is unaware of any previous or current problems with moisture in the rental unit, other than problems arising from the bathroom not being

equipped with a fan and from the occupants not taking proper precautions to manage the resulting moisture. She stated that the Landlord and the former occupant have an on-going dispute resolution proceeding with the Residential Tenancy Branch, which is partly related to mould in the bathroom allegedly arising from a leaking shower.

Both parties are seeking to recover the cost of having the rental unit inspected, which was \$336.34 for the Landlord and \$250.00 for the Tenant.

The Tenant is also seeking compensation for costs associated to the presence of mould in the rental unit, including:

- \$60.00 for moving costs incurred due to the Tenant's decision to vacate the rental unit as a result of mould;
- \$12,680.00 for undisclosed costs relating to the breach of section 32(1) of the *Act*;
- \$5,062.50 for negligence causing death;
- \$5,062.50 for pain and suffering; and
- \$525.00 for anticipated vet costs for an animal that appears to be suffering from exposure to mould.

The Landlord and the Tenant agree that the Tenant sent the Landlord an email, dated April 01, 2015, a copy of which was submitted in evidence. In this email the Tenant informs the Landlord that they will be vacating the rental unit by April 15, 2015 and the Tenant declares that they have the right to end the tenancy without proper notice pursuant to section 45(3) of the *Act*.

The Landlord and the Tenant agree that on April 18, 2014 the Tenant informed the Landlord that the rental unit had been vacated and the keys to the rental unit were returned. The parties agree that rent was not paid for April of 2015.

The Landlord is seeking compensation for unpaid rent from April of 2015, in the amount of \$1,360.00. The Tenant acknowledged that the Tenant did not have authority from the Residential Tenancy Branch to withhold rent and the Tenant did not make any emergency repairs to the rental unit.

The Landlord is seeking compensation, in the amount of \$25.00, as the Tenant did not pay rent when it was due on April 01, 2015. The Landlord and the Tenant agree that the addendum to the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due.

The Landlord and the Tenant agree that the Tenant was to pay 60% of the gas and hydro costs for the residential complex that were incurred during the tenancy. The parties agree that the Tenant paid a monthly utility fee and that the bills would be periodically reconciled, at which time the Tenant would either pay any outstanding amount or would receive a refund if there had been an overpayment.

The Landlord submitted a reconciliation report which indicates the Tenant owes \$229.87 for utilities. The Tenant agrees that the report is accurate and that the Tenant owes \$229.87 for utilities.

The Landlord is seeking compensation, in the amount of \$2,000.00, for legal costs she incurred while dealing with issues arising from this tenancy and to participate in this dispute resolution proceeding.

Analysis

Section 32(1) of the *Act* requires landlords to 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.

While I accept that there is some visible mould in the rental unit, I find that the Tenant has submitted insufficient evidence to establish that the rental unit does not comply with health, safety and housing standards required by law or that it renders the rental unit unsuitable for occupation.

I find that there has been insufficient evidence submitted to show that the mould in the rental unit poses a health risk. In reaching this conclusion I was influenced by the inspection report completed by the restoration company hired by the Landlord, which clearly indicates that no bacteria were found in the test samples. I find this to be the most reliable report submitted in evidence, as the report was based on a chemical analysis, rather than a visual inspection.

Although I accept that not every area in the home was tested by the restoration company hired by the Landlord, which can obviously impact the results of the test, I note that the Tenant has submitted no expert evidence to show that the mould in the rental unit was a health risk.

In determining this matter I was influenced by the report from the local health authority, which inspected the unit on March 30, 2015. This report indicates there appears to be visible mould on some building surfaces, however it clarifies that the presence of mould does not necessarily indicate a health hazard. In the absence of evidence that causes me to conclude that the type of mould present in this rental unit constitutes a health hazard, I am unable to conclude that the rental unit is not suitable for occupation or that it does not comply health, safety and housing standards.

In reaching this conclusion I have placed little weight on the Tenant's testimony that the health of people living in the residential complex was impacted by the mould. In the absence of documentary evidence from a medical practitioner, I find there is no evidence to support this opinion, given that there may be other equally plausible explanations for any health issues arising.

In reaching this conclusion I have placed limited weight on the report from the restoration company hired by the Tenant to inspect the rental unit. Although this report causes me to conclude that mould is visible in various locations in the rental unit, there is nothing in the report that causes me to conclude the type of mould present in the unit poses a health risk.

I note that the report completed by the restoration company hired by the Tenant did not find any moisture in drywall or the attic, although the author of the report concluded that the lack of ventilation in the attic could cause condensation. This causes me to conclude that there is not a significant moisture problem in the rental unit, although the discoloration of the walls and attic indicate there may have been one in the past.

The report completed by the restoration company hired by the Tenant supports the Tenant's submission that there is surface mould in the rental unit, particularly in the bathrooms. This is not unusual for homes of this era and can typically be resolved by keeping a window opening and wiping surfaces on a regular basis to remove mould and to prevent mould growth.

In the report completed by the restoration company hired by the Tenant, the author recommends that the Tenant re-locate until repairs are complete. I have placed no weight on this opinion, as it is not clear to me why the author would reach that conclusion without evidence that the type of mould present in the home constitutes a health hazard. It may be that the author is simply being overly cautious.

In the report completed by the restoration company hired by the Tenant, the author makes several recommendations for repairs to the rental unit. I accept that these repairs represent current industry practice and would likely improve the property; however the Tenant has submitted no evidence to establish that the repairs are necessary to comply with health, safety and housing standards required by law. Specifically, the Tenant has submitted no evidence to show that bathroom fans were required, by code, when this residential complex was built. As the *Act* does not require that rental units meet current building codes, I cannot conclude that the Landlord is obligated to install fans in the bathrooms.

In determining this matter, I have considered the photographs submitted in evidence, some of which corroborate the reports that mould is visible on various surfaces in the rental unit. I find they are of limited value, however, as they do not establish that the type of mould, in the quantities present, constitutes a health hazard. In addition, they do not establish that the surfaces, particularly in the bathroom, cannot be controlled with reasonable cleaning.

In determining this matter, I have placed little weight on the evidence from a former tenant who also reported mould concerns to the Landlord, as none of this evidence helps establish that type of mould in the rental unit constitutes a health hazard.

After considering all the evidence, I find that the Tenant has failed to establish that the Landlord has not complied with section 32(1) of the *Act*. When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

As the Tenant has failed to establish that the Landlord breached the *Act*, I dismiss the Tenant's claim for any compensation related to the Landlord's alleged failure to address a problem with mould in the rental unit, including:

- \$60.00 for moving costs incurred due to decision to vacate the rental unit as a result of mould;
- \$12,680.00 for undisclosed costs relating to the breach of section 32(1) of the *Act*;
- \$5,062.50 for negligence causing death;
- \$5,062.50 for pain and suffering;
- \$525.00 for anticipated vet costs for an animal that appears to be suffering from exposure to mould; and
- \$250.00 for the cost of inspecting the rental unit.

As there appears to have been mould present in the rental unit, I find it was reasonable of the Tenant to report the problem to the Landlord. I find that the Landlord acted reasonably and responsibly when the Landlord hired a company to inspect the mould to ensure the mould did not represent a health hazard and, in doing so, complied with the Landlord's obligations under section 32(1) of the *Act*. I find the cost of inspecting the rental unit is a cost that must be absorbed by the Landlord, as it is simply a cost of ensuring the rental unit is maintained in accordance with section 32(1) of the *Act*. I therefore dismiss the Landlord's claim to recover the cost of inspecting the unit.

On the basis of the undisputed evidence, I find that the Tenant informed the Landlord, via email, that the Tenant had the right to end the tenancy without proper notice, pursuant to section 45(3) of the *Act*, and that the Tenant was vacating the rental unit on April 15, 2015.

Section 45(2) of the *Act* authorizes a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. As this was a fixed term tenancy, the fixed term of which ended on August 31, 2015, I find that the Tenant did not have the right to end the tenancy on April 15, 2015 in accordance with section 45(2) of the *Act*.

Section 45(3) of the *Act* stipulates that 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 tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. In some circumstances failing to remediate a problem with mould that is hazardous to health would give a tenant grounds to end a fixed term tenancy prematurely. In circumstances such as these, where the Tenant has failed to establish that the mould is a health hazard, I cannot conclude that the Tenant had the grounds to end the tenancy in accordance with section 45(3) of the *Act*.

On the basis of the undisputed evidence, I find that the Tenant did not pay rent on April 01, 2015. Section 26(1) of the *Act* requires a tenant to pay rent when it is due, even if the landlord does not comply with the *Act*. As the Tenant was occupying the rental unit on April 01, 2015 and there is no evidence to show that the Tenant had lawful authority to withhold rent, I find that the Tenant owes the Landlord \$1,360.00 in rent for April of 2015.

Section 7 of the *Residential Tenancy Regulation* authorizes a landlord to collect a late fee of not more than \$25.00 when rent is not paid when it is due, providing the tenancy agreement requires the Tenant to pay that fee. As the Tenant did not pay rent when it was due on April 01, 2015 and the tenancy agreement requires the Tenant to pay a fee of \$25.00 whenever rent is not paid when it is due, I find that the Landlord is entitled to a late fee of \$25.00 for the month of April of 2015.

On the basis of the undisputed evidence, I find that the Tenant still owes \$229.87 in utilities.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a party to claim compensation for costs associated with participating in the dispute resolution process. I find that the Landlord did not need to incur legal costs to participate in this proceedings and I can therefore not conclude that the Tenant is obligated to pay the Landlord's legal costs. Similarly, I cannot conclude that the Tenant is obligated to pay the Landlord's legal costs if the Landlord opts to be represented by legal counsel when dealing with issues arising from the tenancy. I therefore dismiss the Landlord's claim for legal fees.

I find that the Landlord's Application for Dispute Resolution has merit and that the Landlord is entitled to recover the \$50.00 fee paid to file an Application for Dispute Resolution.

I find that the Tenant's Application for Dispute Resolution has been without merit and I dismiss the Tenant's application to recover the fee paid to file an Application for Dispute Resolution.

Conclusion

The Landlord has established a monetary claim, in the amount of \$1,664.87, which is comprised of \$1,360.00 in unpaid rent, \$229.87 in unpaid utilities, a \$25.00 late fee, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution.

Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit and pet damage deposit of \$1,360.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$304.87. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia 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: May 07, 2015

Residential Tenancy Branch

