



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNSD

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing and the Amended Application for Dispute Resolution was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenants are entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a two year fixed term written tenancy agreement that provided that the tenancy would begin on July 15, 2014 and end on July 14, 2016. The tenants took possession on July 12, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$1250 per month payable in advance on the 15th day of each month.

The tenant(s) paid a security deposit of \$625 and a pet damage deposit of \$625 at the start of the tenancy.

The tenant testified they experience serious problems with the electrical system in the house in October 2014. The electrical problems continued. In November the tenants began experiencing significant problems with water leaking into the rental unit. The landlord was contacted and a contractor inspected the rental property. He determined there were major problems with the rental property and he was not in a position to make the significant repairs required. The tenants experienced problems with the lack of heat in the rental unit. Significant mould began to appear. In early December a windstorm destroyed part of the fence in the front yard. The landlord failed to take steps despite being advised of the problems on many occasions. On December 12, 2014 the tenant wrote the landlord a letter setting out their problems including:

- No heat
- Roof leaking/mould in attic/walls
- Rat/Rodent wall infestation
- Overgrown danger trees, nowhere to park
- Fence falling apart
- Open electrical in garage/bedroom
- 4/6 windows not even close to being sealed, wind goes right through the house
- No water pressure, cannot use more than 1 tap at a time.

The tenants wrote another letter dated January 20, 2015 rejecting the landlord's proposal of \$100 a month discount and restating the problems with the rental unit. It also states they are cancelling their rent cheques and moving when they find another suitable place.

On February 10, 2015 the tenants wrote the landlord advising they were moving immediately and providing the landlord with their forwarding address in writing. The landlord re-rented the rental unit with the new tenant taking possession in early March.

The tenants also rely on 160 photographs which were produced as well as a large binder of documentary evidence.

The landlord disputes the tenants' claim based on the following:

- The tenants are professional tenants and they have fabricated the lack of heating, roof leakage and mold problem.
- The tenants illegally charged back 4 months of rent totaling \$5000 and the landlord has filed a complaint with the bank (one of the tenants was employed by the bank at the material time),
- The bank has reached a settlement with the landlord which is confidential.
- The asphalt shingle roof and zonal electric baseboard heating system were installed and improved in September 2008.
- The electrical baseboard heating system must have been working fine based on the actual and estimated hydro use.
- The previous owner warranted the roof for 15 years.
- The landlord asked the tenants and their family to make urgent repairs in December 13, 2014 but they failed to do so.
- One of the tenants expressed satisfaction with the condition of the rental unit in an e-mail sent in September 2014. They also e-mailed the landlord on January 10, 2015 about the landlord's proposal of a \$100 discount of rent for the next two years stating they are considering the proposal and there is a good possibility they might accept it.

Analysis:

In *Faryna v. Chorny*, [1952] 2 D.L.R. 354, the B.C. Court of Appeal set out the following test for assessing credibility:

"The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carries conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test

of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. (page 357)”

I did not find the testimony of the landlord where he minimized the problems with the rental unit and alleged the tenants fabricated evidence as credible. In this regard I prefer the evidence of the tenants to that of the landlord. I am satisfied based on the there were extensive problems with the rental unit. I further determined the landlord was negligent in failing to deal with the problems and that those significant problems caused damage to tenants’ belongings. These findings are based on the following:

- The photographic and documentary evidence corroborate the tenants’ testimony of the problems with the rental unit.
- The landlord alleged the tenants fabricated the evidence. However, the landlord failed to produce sufficient proof to corroborate this testimony.
- The evidence discloses that the landlord was advised of the problems on many occasions but failed to take sufficient steps to rectify the problem.
- The landlord has a statutory obligation under section 32 of the Residential Tenancy Act which provides as follows:

Landlord and tenant obligations to repair and maintain

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.

...

(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.

The landlord breached this obligation in failing to take steps to make appropriate repairs. The landlord has not fulfilled his obligations by asking the tenants to do the work.

- The testimony on the tenants is consistent with the photographs and other documentary evidence.
- The landlord proposed a \$100 reduction of rent. This action is not consistent with a landlord who takes the position there is no problems with the rental unit.
- I have carefully considered the evidence presented by the landlord in his 44 page submission. Much of the evidence dealt with one of the tenant's action in charging back rent cheques. The tenant acknowledges he was wrong in doing this and has lost his job as a result. The landlord has been compensated. The tenant testified he has repaid the bank. I do not accept the submission of the landlord that I should consider the tenant is not credible because of this error in judgment. The tenant's testimony is more in harmony with the surrounding evidence and his testimony as to the condition of the rental unit is preferred to that of the landlord.

Monetary Order and Cost of Filing fee:

I find that the negligence of the landlord in failing to respond to the tenants' concerns about the lack of heat and water leakage caused the growth of mould in the rental unit and was the direct cause of damaging many of the tenants' belongings. I determined the tenants are entitled to compensation for the items damaged by the mould caused by the negligence of the landlord and set out below. I do not accept the submission of the landlord that the tenants failed to prove their loss because they have not produced receipts of purchasing the goods. The photographs show the mould damage. The tenants produced quotations and other documentary evidence supporting the replacement costs of the goods. While the tenants are not entitled to the replacement cost of the goods damaged or destroyed it is within the jurisdiction of an arbitrator to make an award for the depreciated value of the loss suffered by the tenants. I

determined there was sufficient evidence to make such an award. With respect to each of the tenants' claims I find as follows:

1. The tenants claimed the sum of \$1715 plus tax for the cost of replacing a black genuine leather sofa that was damaged by mould.. The tenants have disposed of the couch but not yet replaced it with another one because of financial reasons. They produced evidence of value as to the amount claimed. I determined they sufficiently attempted to remediate the problem but were not successful. The couch was 2 to 3 years old. It was purchased new. I determined the tenants are entitled to \$1200 of this claim after considering depreciation.
2. I determined the tenants are entitled to \$800 for the depreciated value of a large format custom photo in a wood frame which was damaged by the mould.
3. The tenants claimed the sum of \$89.99 plus tax for the cost of replacing a bedroom dresser from IKEA which was damaged by mould. The dresser was 2 years old. I determined the tenants are entitled to \$50 for this claim after considering depreciation.
4. The tenants claimed the sum of \$379 plus tax for the cost of bedding, pillows, and mattress sheets, featherbed damaged by mould. Those items were approximately 1 year old. I determined the tenants are entitled to \$300 for this claim after considering depreciation.
5. The tenants claimed the sum of \$159 for the cost of replacing a 27" luggage container damaged by mould. The luggage container was 3 to 4 years old. I determined the tenants are entitled to \$50 for this claim after considering depreciation.
6. I determined the tenants are entitled to \$45 for the cost of replacing a large frame Amsterdam photo damaged by mould.
7. The tenants claimed the sum of \$340 for the cost of replacing an Apple keyboard. I determined the keyboard was damaged by mould. The keyboard has not been replaced. In the circumstances I determined the tenants are entitled to \$150 of this claim.

8. The tenants claimed the sum of \$191 for the cost of replacing a brother wireless laser printer and cartridge damaged by mould. The printer was 1 year old. I determined the tenants are entitled to \$150 of this claim.
9. I determined the tenants are entitled to \$29.99 for the cost of replacing a television remote control damaged by mould.
10. The tenants claimed \$570 plus taxes for the cost of replacing 2 suits. One suit was one year old and the other was 2 years old. I determined the suits were damaged by the mould. I determined the tenants are entitled to \$400 of this claim after depreciation is considered.
11. The tenants claimed \$293.88 plus tax for the cost of replacing 2 men's winter ski jackets. The jackets were purchased in 2011. I determined the jackets were damaged by the mould. I determined the tenants are entitled to \$150 of this claim after depreciation is considered.
12. I determined the tenants are entitled to \$100 for the cost of replacing 5 men's dress shirts damaged by mould after depreciation is considered.
13. I determined the tenants are entitled to \$75 for the cost of replacing a heavy long winter work jacket damaged by mould after depreciation is considered.
14. I determined the tenants are entitled to \$50 for the cost of replacing 5 men's fabric belts damaged by mould after depreciation is considered.
15. The tenants claimed \$46.98 for the cost of replacing a Swiss Gear backpack. The backpack was 2 to 3 years old. I determined the backpack was damaged by mould. I determined the tenants are entitled to \$25 of this claim after depreciation is considered.
16. I determined the tenants are entitled to \$45 for the cost to replace a laptop bag damaged by mould after depreciation is considered.
17. I determined the tenants are entitled to \$55 for the cost of 2 Cross rib roasts that had to be disposed of because of problems with the electrical system which the landlord failed to fix in a timely manner.
18. I determined the tenants are entitled to \$24.88 for the cost of replacing a baby safety gate damaged by mould.

19. I determined the tenants are entitled to \$9.98 for the cost of a tropical house plant damaged by the negligence of the landlord in failing to ensure adequate heat.
20. I determined the tenants are entitled to \$40 for the cost to replace a 4 year old Dome tent caused by the landlord's negligence in failing to control the rat problem.
21. The tenants claimed the sum of \$309 plus tax for the cost to replace a rug pad rubber backing. I determined the rug was damaged by the landlord's negligence in failing to control the rodent problem. The rug was at least 4 years old. I determined tenants are entitled to \$150 of this claim after depreciation is considered.
22. I determined the tenants are entitled to \$15 for the cost of replacing a folding ottoman that had to be disposed of because of the negligence of the landlord.
23. I determined the tenants are entitled to \$50 for the cost to replace a 4 year old featherbed that had to be disposed because of mould caused by the negligence of the landlord.
24. The tenant's claimed the sum of \$349 based on a quotation to repair their 32" television. I determined the television was damaged because of the electrical problems in the rental unit. The television has not been replaced. However, if the tenants purchase a new one now they would be receiving a better new television. I determined the tenants are entitled to \$200 of this claim.
25. I dismissed the claim of \$175 for the cost of mould remediation. The tenants testified they paid one of their mothers this sum to do the work. I am not satisfied this was done in good faith. The couch was subsequently disposed of.
26. I determined the tenants are entitled to \$50 for the cost of a bag of personal toiletries that had to be disposed of.
27. I determined the tenants are entitled to \$322.05 for the cost of moving.
28. The tenants paid a security deposit of \$625 and a pet damage deposit of \$625 for a total of \$1250. The tenants agreed the landlord could retain \$325.88 of this sum. I determined the tenants are entitled to the balance of the security deposit and pet damage deposit in the sum of \$924.12.

29. The tenants claimed reimbursement of the sum of \$3750 for the rent for November 15, 2014 to February 15, 2015. I determined the problems with the rental unit were significant. However, they did receive some value. I determined the tenants are entitled to \$1875 for the reduced value of the tenancy caused by the problems in the rental unit.

I ordered the landlord(s) to pay to the tenant the sum of \$7336.02 plus the sum of \$100 in respect of the filing fee paid pursuant to section 49 for a total of \$7436.02.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: July 08, 2015

Residential Tenancy Branch

