



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67 and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Two tenants and the landlord attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenants' Application for Dispute Resolution including the Notice of Hearing and documentary evidence. I accept that the landlord was sufficiently served with these documents.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for loss as a result of this tenancy?
Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties testified that, to the best of their recollection, this tenancy began on September 1, 2013. Neither party submitted a copy of a written residential tenancy agreement however both parties agreed that a written residential tenancy agreement had been created with respect to this tenancy. This month to month tenancy had a monthly rental amount of \$1300.00 payable on the first of each month. Two brothers rented the unit; one brother paid \$700.00 per month and one brother paid \$600.00, according to the testimony of the parties at this hearing.

Both parties testified that the tenancy came to an end on March 31, 2015 when the tenants vacated the residence and returned all keys to the rental unit. The landlord testified that she continues to hold a \$650.00 security deposit paid by the tenants at the outset of the tenancy. She testified that she has made no application to retain all or a portion of the security deposit but that the tenants agreed to allow her to retain \$150.00 of the security deposit. The tenants both confirmed that they agreed to allow the landlord to retain \$150.00 of their security deposit. The tenants also confirmed the landlord's testimony that they did not provide any forwarding

address to the landlord. As of the date of their application, the tenants confirmed they had not provided the landlord with a forwarding address.

The tenants made an application for a monetary award in the amount of \$1250.00. On a monetary worksheet, the tenants claimed that they should be reimbursed for \$700.00 of March 2015 rent and \$550.00 of February 2015 rent. The tenants testified that their rental unit had excessive amounts of mould and that the landlord did not take action in a reasonable amount of time to address it. They also provided photographs of personal items that had been covered with mould. They sought a monetary order to compensate them for the loss of those personal items as well as the loss of full use of their unit as a result of the mould within.

The landlord conceded that there was mould in the unit, mainly in the bathroom. She testified that the tenants would not remain in the rental unit when the mould was being remediated. She testified that since the tenants' move-out, the mould has been removed. The landlord also testified that the tenants often kept their windows open and any damage to items in the rental unit was more likely a result of the exposure than any mould. The landlord claims that the mould was almost exclusively in the bathroom.

The tenants submitted photographic evidence. The photographs submitted were black and white, and appeared to show spots on the flooring and walls in some portions of the residence as well as on a couch and a pair of flip flop sandals. Both tenants testified that their mattress and a dresser as well as a couch were ruined from the mould. The tenants did not provide photographs of the mattress, indicating that the mould could not be seen in the photographs. Tenant DS testified that he works as a construction safety officer and he was able to recognize mould throughout the rental unit. The tenants submitted copies of correspondence with the landlord, including repeated text messages requesting the landlord address the mould issue and advising her that the issue was growing in both size and seriousness.

Both tenants testified that they moved out as soon as they were able. Tenant DC moved out before his brother. Both tenants testified to having health effects from the mould within the unit. They testified that neither of them wished to remain in the unit while the mould issue was addressed and that they had no commitment from the landlord as to when the mould might be removed. The tenants provided text message communications and emails including the landlord's responses promising that the issue would be addressed. The landlord acknowledges, in those messages and in her testimony at this hearing, that there was mould within the unit and that it required attention. Over the course of January 2015, correspondence indicates that she promised to have someone in to address the mould on several different occasions. However, ultimately this did not occur before the tenants vacated the unit.

Analysis

The tenants sought a monetary order pursuant to section 67 of the *Act*. Section 67 establishes that if damage or loss results from a tenancy, an arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenants provided some proof of the damage caused by mould within the unit. The tenants provided testimony of their experience within the rental unit as a result of the mould. The tenants submitted copies of messages sent to the landlord stating that their health was being adversely affected by the mould. However, they did not provide any documentary evidence (doctor's notes, documentation of time off work or a list of particular symptoms) to support their claim that their health was affected. The tenants provided testimony that mould existed within the unit. That fact was undisputed by the landlord, although she disagreed with the level of mould described by tenants. The tenants provided photographic evidence to illustrate mould on certain areas of the rental unit and some of their belongings. I find the tenants have provided evidence, mostly undisputed by the landlord, that there was mould within their rental unit.

When making a monetary claim under section 67 of the *Act*, the tenants are also required to prove that any loss that they incurred (as a result of the mould, in this instance) stems from a violation of the residential tenancy agreement or a contravention of the *Act* by the landlord. The tenants provided some evidence of a delay by the landlord in attending to the mould within the unit in the form of the correspondence with the landlord. This was also undisputed by the landlord. The landlord stated that the tenants caused some delay as well as a result of their reluctance to allow work on the mould issue to take place when they were in the rental unit. Based on all of the evidence provided, I find that the landlord did not meet her obligation under section 32 of the *Residential Tenancy Act* to ensure the health and safety standards of the rental unit.

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.

The tenants did not provide any evidence verifying an actual monetary loss in the form of receipts related to the items damaged by mould or to quantify their health related issues, discomfort and inconvenience beyond their testimony. They sought a monetary award in the amount of \$1250.00 to reflect reimbursement of one full month's rent and one partial month's

rent before they vacated the premises as a result of the inconvenience and lack of use and enjoyment as a result of the mould in the unit.

I find that the tenants have provided undisputed evidence that there was mould in the unit. I find that the tenants have provided evidence that the existence of mould within the rental unit remained unaddressed by the landlord over the course of February and March 2015. I find that the tenants have shown that they suffered some monetary and general loss as a result of the mould in the unit during their tenancy. I accept the testimony of the tenants that mould grew on their couch and other personal items, as shown in the photographs. I do not accept the testimony of the landlord that the tenants items were damaged as a result of leaving the windows open. Based on the evidence submitted, including correspondence throughout the last months of this tenancy, I also find that there was impact on the health, safety and comfort of the tenants as a result of the unaddressed mould within the residence.

Residential Tenancy Policy Guideline No. 16 provides guidance in the awarding of damages,

An arbitrator may only award damages as permitted by the Legislation or the Common Law. 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.

While the tenants have provided no evidence to identify out of pocket expenditures for replacement or repair of their property damaged by mould, the tenants have provided evidence that they suffered a general loss that does not have an “actual value”. Therefore, I find that an award reflecting nominal damages is appropriate to affirm an infraction of the tenants’ rights to a healthy and safe rental unit. I find the tenants are entitled to a reduction in their rent by half for the final two months of their tenancy (\$350.00 in February and \$350.00 in March 2015). I find the tenants are entitled to \$700.00 as a reflection of the general loss suffered.

The landlord has made no application to retain the tenant’s security deposit for this tenancy nor have the tenants applied for its return in their application. For the benefit of both parties, I refer to section 38(1) of the *Act*. Section 38 requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant’s forwarding address in writing (whichever is later) to either return the security deposit in full or file an Application for Dispute Resolution to retain all or a portion of the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, must return the deposit and must pay the tenant a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security deposit if “at the end of a tenancy, the tenant agrees in writing the landlord may

retain the amount to pay a liability or obligation of the tenant.” I advise the parties to act in accordance with the *Act* in addressing the security deposit.

As the tenants have been successful in their application for a monetary award, I find the tenants are entitled to recover the \$50.00 filing fee for this application.

Conclusion

I issue a monetary order in favour of the tenants in the amount of \$750.00.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this 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: September 18, 2015

Residential Tenancy Branch

