



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant's application: MNR, MNDC, MNSD, PSF, RR, FF

Landlord's application: MND, MNR, MNSD, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenant. The applications were set for hearing by conference call on June 11, 2015. The hearing set for June 11th was adjourned and rescheduled for hearing on August 18, 2015. By an interim decision dated June 12, 2015 directions were given with respect to the submission and exchange of evidence before the reconvened hearing.

In the tenant's original application requested that the landlord provide services or facilities, restrictions on the landlord's right to enter the rental unit and a rent reduction in addition to a monetary award and the return of his security deposit. Because the tenancy has now ended the tenant claims for remedies other than a monetary award and return of his security deposit are dismissed.

Issue(s) to be Decided

Is the tenant entitled to a monetary award and if so, in what amount?

Is the tenant entitled to the return of his security deposit?

Is the landlord entitled to a monetary award for loss of rent and damage to the rental unit and if so, in what amount?

Is the landlord entitled to retain all or part of the security deposit?

Background and Evidence

The rental property is a house in Surrey. I was not provided with a copy of a tenancy agreement. The tenancy began in August 2013. The monthly rent was \$1,000.00 and the tenant paid a \$500.00 security deposit before the tenancy commenced. The tenants moved out of the rental property and the tenancy ended on or about January 23, 2015.

In the tenant's application, filed on January 29, 2015 and amended on May 28, 2015, he has claimed payment of the sum of \$25,000.00. As set out in a monetary order worksheet, the tenant has claimed the following:

• Rent paid, property manager:	\$15,200.00
• 40 % of Hydro utilities paid for 18 months:	\$1,620.00
• Mould air testing:	\$525.00
• Moving costs:	\$400.00
• Repairs of flashing and other metal to help stop the leaks:	\$350.00
• Time spent cleaning items contaminated by mould:	\$400.00
• Damage deposit:	\$500.00
• Cost of relocation to allow repairs needed for property:	\$2,000.00
• Aggravated damages:	\$4,005.00
Total:	\$25,000.00

The tenant's evidence consisted of a USB flash memory stick with a large number of digital images and videos as well as images of text messages. He also submitted photocopies of text messages exchanged with the landlord or his property manager.

The tenant complained that the rental unit was not cleaned before the tenancy began and a pool table was left behind in the rental unit. The tenant said that there was unfinished plywood flooring in part of the house.

The tenants discovered problems with water leaking into the rental unit and rodents, including mice and rats in the unit. The tenant said that water was leaking from the sundeck into the house. The tenant performed work to fix the deck and the railing and was paid for the work by the landlord. The tenant said that the rodent problem was eventually solved. The house has an integral garage on the ground level. There is second floor living accommodation above the garage. The tenant testified that the interior of the garage was mouldy and hazardous. The tenant stopped using the garage in June of 2014. The tenant said that in November a section of the garage roof collapsed. It was a section of the interior drywall that fell and it exposed the insulation. The insulation was black with mould and the attic or roof area was full of mouldy insulation. The tenant requested that the landlord deal with the problem. The landlord said he would fix the problem, but by December nothing was fixed. The tenant said that the mould was affecting the health of his family and making them sick. The tenant submitted several notes from physicians. There were copies of notes written on prescription pads that reported days off due to stomach flu and there were hospital reports to report that the tenant or his partner was unable to attend work or school. The tenant did not submit any medical reports that provided any diagnostic information.

The tenant hired a mould testing and air quality inspection company to inspect the rental unit and collect air samples. Although he was requested to do so, the tenant did not provide a physical copy of the report. He submitted a copy in digital format on a usb flash drive. The tenant said that many bags of mouldy insulation had to be removed from the house. The landlord paid the tenant \$580.00 for performing work on the garage, including the removal of insulation. The tenant made a complaint to the media that the landlord was not dealing with the problem.

The tenant did not pay rent from November onwards. The tenant moved out of the rental property on or about January 23rd, although for some time after he moved, he contended that he had moved only temporarily while he waited for the landlord to restore the house to liveable condition and when the work was completed he planned to move back to the rental property.

In response to the tenant's assertions, the landlord hired a company to inspect the rental property and conduct air quality tests and perform a mould inspection. The landlord provided a copy of the report dated January 19, 2015. In the report it was noted that there was water damage in the area of the unfinished garage and an unfinished wall between the garage and the basement suite area of the house. The inspector noted a musty odour in the main suite. He noted that the attic trap door was open, allowing free movement of air between the main suite and attic areas. The landlord's inspector took air samples from various locations in the house as well as outdoor samples for comparison. The concentrations of mould in the garage and basement suite were lower than the levels in the outdoor samples, while the concentrations in main suite living room area were equal to the outdoor samples. The mould types identified were common species considered to be of low to medium risk. The inspector considered that the attic was the likely interior source for the mould spores.

The landlord referred to the inspector's recommendations that the air circulation should be increased inside the house, the attic trap door should be sealed up and the carpets steam cleaned. He said that it was apparent from the report that the tenant had grossly exaggerated the problem and it was the tenant's own actions in pulling down the garage ceiling and doing a bad job

The landlord testified that the tenant was the cause of all the problems with the rental property. The tenant claimed to be qualified to perform repairs to the sundeck and railing. The landlord had the tenant perform the work, in exchange for a \$500.00 rent reduction, but he said that the tenant's incompetent job was the cause of the water leaks and the ongoing problems in the garage. The landlord said that the tenant's false claims about the mould damage have caused him loss and expense. He said that the tenant falsely claimed that the house was unliveable when in fact there were no repairs needed to the house, apart from repairs to fix the problems caused by the tenant. The landlord said that the garage roof did not collapse, but that the tenant pulled a section of the drywall off the ceiling and exposed the insulation above. He referred to the mould inspection report that he obtained. He said that it showed that the air

quality in the house was acceptable and, apart from sealing the attic and cleaning the carpet, there were no repairs needed to make the house liveable. The tenant disputed the landlord's evidence. He said that the landlord's inspector told the tenant that: "I wouldn't live in this house."

The landlord submitted a monetary claim for \$25,000.00 in response to the tenant's claim. His claim included the following:

• New flooring in the house:	\$5,670.00
• Mould test report:	\$478.75
• Installation of alarm system:	\$1578.96
• Security services:	\$450.75
• Repairs to railing and sundeck, adding roof:	\$787.50
• Cleaning house removing garbage:	\$1,000.00
• Failed/unpaid rent for three months:	\$2,850.00
• Loss of rent due to need for repairs:	\$3,800.00
• Cameras and security:	\$1,344.00
• Misc labour and expense	\$1,520.00
• Loss of value of property due to bad publicity:	\$5,500.00
Total:	\$24,999.66

The landlord said the tenant kept returning to the rental property after the tenancy ended. He claimed that the police were involved and he had to install alarms, a video surveillance system and hire security to prevent the tenant's continuing trespasses.

The landlord submitted photographs of the rental property. He said the photos depicted damage to the property caused by the tenant, including stained carpets, damaged walls and doors, including holes in the walls, damaged and dirty floors, including damaged hardwood floors. The landlord submitted an invoice for the supply and installation of carpet and hardwood floors in the amount of \$5,670.00. The invoice was dated February 11, 2015. There were no particulars on the invoice to show the materials supplied or the work done. The landlord submitted documents with respect to the supply of security services and for the attendance of a security guard for three days. The landlord submitted an invoice for the installation of a roof or awning over the deck, a receipt for a \$1,000.00 payment said to be for cleanup and an invoice to the supply of a video surveillance system. The landlord also submitted a letter from a realtor who asserted that the values of the rental property had been diminished by \$5,000 to \$6,000 due to the alleged false allegations and a television news story that repeated the false evidence.

Analysis

The tenant has alleged that he was forced out of the rental unit as a result of the landlord's failure to act promptly and properly to remediate a severe mould problem that constituted a

serious health problem that was making the tenant and his family sick. The tenant's evidence in support of his claims consisted of videos and photographs of the rental property a volume of text messages, many of which are self-serving statements with little probative value. The tenant arranged for an inspection of the rental property on or about January 16th. Tests results were returned in a report dated January 21, 2015. The tenant failed to provide a copy of the report, but I looked at what was claimed to be a digital version submitted by the tenant on a flash memory drive. The air sample report showed some elevated mould levels in an upstairs bedroom. According to the report some of the spore types could cause allergies, but the results did not show alarming levels of dangerous forms of mould. The landlord's mould report yielded similar results; I find that the reports do not support the tenant's claims that the rental property was unliveable. The tenant has not provided any convincing medical evidence to show that he or his family members became ill due to mould. There is no proper diagnostic report, merely a series of notes, for the most part given to excuse absences from work. The diagnosis repeated several times in the notes was "stomach flu". I find that the medical notes are unhelpful and do not establish that the tenant or his family suffered from any mould related illnesses.

The tenant's monetary claim includes amounts that are without any foundation. He has claimed a refund of rent paid for the entire duration of the tenancy, although he contended that the mould problem did not appear until November, 2014 and the tenant did not pay rent for the last three months of his tenancy. I find that the tenant's evidence does not support a finding that the house was unliveable, or that it was necessary that he move and I have noted that he did not pay rent in any event for November, December or January. I find that the tenant's claims are without merit and that he is not entitled to recover any of the amounts claimed for return of rent paid, relocation costs, moving expenses or any amount for aggravated damages. The tenant claimed an amount for mould testing, but the landlord responded to the tenant's complaints and he did have the house inspected and tested; the tenant's expenditure for a report was unnecessary and I do not allow his claim for the report. The tenant claimed an amount for metal work and roof flashing repairs. He did not provide evidence that the landlord authorized the work, or that it amounted to an emergency repair that the landlord failed or refused to undertake. The work was said to have been performed by the tenant and his brother; I do not allow this claim. The tenant's application for a monetary award is dismissed without leave to reapply. His claim for the return of his security deposit will be addressed later in these reasons.

With respect to the landlord's claim, the landlord did not provide a condition inspection report to establish the condition of the rental unit when the tenancy began. The landlord has not shown that the floor replacement costs relate to any damage caused by the tenant during the tenancy and this claim is denied. I find that the landlord has not proved that the tenant's conduct required that he hire security services or that he install alarms and video surveillance systems; these claims are denied. The claim for the installation of a roof over the deck is unrelated to the tenancy and there is no merit to this claim; it is dismissed.

The landlord complained that the tenant caused the damage that led to the water leak into the garage and the removal of the insulation. The landlord hired the tenant to perform work on the

deck and he also hired and paid the tenant to remove the insulation after the garage ceiling was opened due to the leak. The landlord chose to hire the tenant to perform work to the rental property. The landlord's relationship with the tenant as a contractor falls outside of the scope of the tenancy agreement and the landlord cannot now complain that he should now be liable in his capacity as tenant for the work he performed at the landlord's request. In any event the landlord has not provided evidence to establish on a balance of probabilities that the work was negligently performed. On the evidence the tenant was not required to pay rent for the months of November, December and January due to the disruption to his tenancy by the insulation removal process and I deny the landlord's claim for the recovery of rent for those months. The landlord has not shown that he took any steps to rent out the house after the tenancy ended in January. The landlord has not provided evidence that the house was ever rented after January. The landlord has not provided sufficient evidence to support a claim for loss of revenue for any period after January and this claim is denied.

The landlord's undated realtor's letter suggesting that the value of the property has depreciated because of allegations by the tenant is completely inadequate to support an award for diminution in the value of the rental property and this claim is dismissed without leave to reapply. In the absence of any condition inspection report and in light of a statement by the landlord's former property manager that as of February, 2015, the property was in the same condition as when rented, I do not allow the landlord's claim for miscellaneous labour and cleaning expenses. The landlord's claims for loss and damage have been dismissed in their entirety without leave to reapply.

Conclusion

The tenant's claims for a monetary award have been dismissed without leave to reapply, as have the landlord's claims, including the landlord's claim to retain the tenant's security deposit.

Residential Tenancy Policy Guideline 17 provides as follows:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In his application the tenant requested the return of his security deposit. Because the landlord's claim has been dismissed in its entirety without leave, I grant the tenant's application solely for the return of the deposit and I grant the tenant a monetary order in the amount of \$500.00. I do

not award the recovery of filing fees for either application. This order may be registered in the 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: September 25, 2015

Residential Tenancy Branch

