Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of 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;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord confirmed that on or about May 5, 2015, she received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail. On the basis of the landlord's sworn testimony, I find that the landlord was duly served with this package in accordance with section 89(1) of the *Act*. Both parties agreed that they received one another's written evidence packages, including photographs from one another. I find that these packages were duly served to one another in accordance with section 88 of the *Act*.

The landlord's photographs were photocopies and barely legible. As I have been unable to discern anything of value from these photographs, I have not considered them as part of my decision-making in this matter.

Issues(s) to be Decided
Is the tenant entitled to a monetary award for losses arising out of this tenancy?

Background and Evidence

While I have turned my mind to all the documentary evidence, including the tenant's photographs, miscellaneous letters and articles from the internet about the health effects of mould, receipts, invoices and e-mails, and the testimony of the parties and their witnesses, not all details of the respective submissions and / or arguments are

reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The parties agreed that this periodic tenancy began in December 2012. Although the landlord testified that she prepared a written Residential Tenancy Agreement, signed by the tenant, she did not provide a copy of that Agreement to the tenant as required under the *Act.* Monthly rent by the end of this tenancy was set at $1,150.00, payable in advance on the first of each month. The landlord has returned the tenant's $575.00 security deposit to the tenant.

The tenant testified that during the course of this tenancy she advised the landlord that the hardwood floors in one of the rooms was warping and that the landlord should attend to this matter.

On May 13, 2013, a flooring installer hired by the landlord visited the rental unit to check the condition of the flooring and to reinstall flooring if these repairs were necessary. When the installer inspected the flooring, he discovered that the dryer vent from the clothes dryer was improperly vented and was emitting steam from the dryer under the sub-floor. The dryer vent had no outside venting, a problem never noticed until the flooring installer pulled portions of the floor to inspect why steam was coming up from the floor. The landlord purchased this rental property after obtaining a house inspection, which apparently failed to identify any venting issues. The landlord also lived in this rental unit prior to the tenant and noticed no health issues or concerns regarding the hardwood flooring in question.

The flooring installer discovered what the tenant described as black mould under the flooring. The tenant maintained that he told her that she should leave the rental unit immediately, as the mould could be affecting her health and the health of her young family, including a newborn. She provided no written evidence from the flooring installer because he did not want to get involved; however, the photos were taken by him at the time of his inspection. She said that the flooring installer was not equipped to undertake repairs of hazardous mould conditions under the floor. After the landlord rushed to the rental unit to inspect the open flooring herself, the tenant said that the landlord advised that she was unwilling to hire a properly qualified and competent building restoration professional the tenant was by then requesting. The tenant gave undisputed sworn testimony and written evidence that the landlord told her that she and her male friend would undertake the repairs themselves. The tenant became increasingly concerned about the health implications of returning to the rental unit, given that the landlord and her male friend were not taking proper precautions to ensure that the mould spores were not spreading to the whole rental unit.

The landlord testified that when she rushed to the rental home after the flooring installer contacted her, she confirmed that the flooring and sub-flooring were wet from the improperly vented clothes dryer where steam had apparently been coming out of the floor. She and her witness who also viewed the premises shortly thereafter testified that any mould that was there was white mould or more likely adhesive that had broken down due to the moisture escaping from the dryer vent. She entered written evidence supported by sworn testimony that the damaged area of flooring was limited to a small two foot by four foot area and that the only area that needed to be dried, removed and repaired was an even smaller one or two foot area.

The tenant refused to return to live in the rental unit as she was concerned that the landlord had allowed mould spores to spread throughout the rental unit. The tenant testified that she sent the landlord a text message to advise her that she was not returning to live in the rental unit with her family after the damage caused by the dryer vent under the floor became apparent. She said that she believed that she was entitled to end her tenancy early and without written notice because the landlord had failed to provide her and her family with a safe and healthy rental unit. She maintained that her $3,000.00 couch was ruined by the mouldy conditions. She and her mother testified that mould was growing on bedding, the mattresses, clothing, knapsacks and the walls. She testified that the mould conditions caused major breathing problems for her newborn. Her mother gave sworn testimony that she has allergies to mould and found that she was unable to even visit the rental unit without experiencing serious breathing difficulties. The tenant said that the landlord gave her $100.00 to compensate her for the disruption caused by the mould problems. She said that the landlord did not offer to place her in a hotel while the rental unit was repaired.

The landlord and her witness, her bookkeeper, familiar with this situation, testified that the entire repair process was completed within seven days. The landlord and her witness gave written evidence and sworn testimony that the tenant's couch was already stained badly and a portion was broken. Although the landlord said that she gave $200.00 to the tenant, she did not obtain a receipt from the tenant for this cash payment. She said that she allowed the tenant to continue moving those possessions she wanted to keep from her rental unit until mid-June 2013, when the tenant eventually returned her keys. The parties agreed that the landlord did not reimburse the tenant for any portion of her May 2013 rent, other than the cash payment identified above. The tenant did not pay any rent for June 2013; the landlord allowed the tenant to end her tenancy without providing 30 days notice in writing.

The tenant's application for a monetary award of $17,413.00 included the following items as outlined in her written evidence:

Item	**Amount**
Recovery of 6 Months of Rent Paid for this Rental Unit from December 2012 to May 2013 (6 x $1,150.00 = $ 6,900.00)	$6,900.00
Damage to Couch	3,000.00
Damage to Beds	1,200.00
Moving Costs	313.00
Money Borrowed from Family & Friends	3,000.00
Personal Suffering and Pain	3,000.00
Total Monetary Order Requested	**$17,413.00**

Analysis

Section 67 of the *Act* 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. In this case, the onus is on the tenant to prove on the balance of probabilities that the landlord caused the losses claimed by the tenant.

As outlined below, section 32(1) of the *Act* places the responsibility for keeping a rental unit in a healthy state of repair:

> ***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.*

Other than generic information extracted from internet sources of uncertain validity to the specific matter before me, the sole written evidence that the tenant produced regarding the health hazards that prompted her to end her tenancy was the following July 11, 2013 note from her then five year old son's doctor:

> *J was seen in the pediatric clinic regarding his chronic cough and exhaustion. He was exposed to black molds in his previous house, which is not healthy, regardless of the person's medical condition. He was prescribed two inhalers and he will be follow up in 2 weeks…*

I find this information is of little benefit in assessing a causal relationship between the rental unit where this child was living until May 13, 2013, and his health almost two months later. There is nothing in this short note that establishes that the doctor had any knowledge whatsoever of the conditions in the rental unit other than the information reported to him by the tenant. At the hearing, the tenant said that this was a follow-up appointment and note and that her child's health problems had been known to the doctor who issued this note for some time prior to July 11, 2013. Without more specific information from the doctor regarding this matter, I find that the tenant has not demonstrated to the extent required that the landlord was responsible for health hazards in the rental unit.

I find that much of the tenant's claim for compensation relies on her assertion that her health and that of her family were impacted by the landlord's failure to maintain a healthy living environment in the rental unit. Although the tenant did complain about steam emanating from the flooring, neither the tenant nor the landlord, were aware that the clothes dryer was not vented outside this rental property. The landlord said that she lived in the rental unit before this tenancy began and never noticed any problem with steam coming through the hardwood flooring. However, she conceded that she would not have run the clothes dryer nearly as often as the tenant, whose young children required more use of the clothes dryer. As neither party was aware of the source of the problem until May 13, 2013, and the landlord could not be held responsible for a problem that was only discovered on that date, I find that the landlord cannot be held in any way responsible for compensating the tenant for the monthly rent she paid for the first five months of her tenancy. I dismiss this portion of the tenant's claim without leave to reapply.

Paragraphs 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Section 28(c) of the *Act* also protects a tenant's right to quiet enjoyment of the rental unit covered by their tenancy agreement.

In considering the tenant's application for a monetary award for the rent she paid in May 2013, I am mindful that the tenant ended this tenancy precipitously and without giving the landlord any formal written notification to do so, as is required by the *Act*. She left after having paid the rent for May 2013, that was due on May 1. While I can appreciate why the tenant was so worried about the health implications of remaining in the rental unit when mould was present, I give little weight to her assertion, lacking as it is in any statement from the floor installer, that he told her that she must vacate the rental unit immediately. Neither the floor installer, who allegedly gave this advice, nor the parties nor any of their witnesses have any professional qualifications to determine whether the type of mould found in the sub-floor of the hardwood floor in question was hazardous and presented a barrier to this tenancy continuing once the repairs were completed.

The landlord testified that it took her and her male friend approximately one week to remove, repair and reseal the flooring in the rental unit. During this time, there is no doubt that the tenant and her young family could not reside in the rental unit. She and her witness testified that she checked with the "poison control" office to ensure that no extra precautions needed to be taken to protect the rental unit from the materials that were removed and repaired from below the hardwood flooring. The landlord testified that since the area involved was so small, there were no extra precautions needed, nor was it necessary for specially trained and equipped restoration workers required to perform these tasks.

When the tenant paid her full monthly rent of $1,150.00 for May 2013, she was anticipating being able to stay in the premises for that entire month. Despite the landlord's lack of knowledge as to the reason for the warping of the hardwood flooring, the landlord was aware of the problem as of May 13, 2013, when the floor installer discovered the source of the problem. While the landlord may have taken adequate precautions to repair and rehabilitate the rental unit after May 13, 2013, the parties agreed that the tenant and her family could not remain in the rental unit while this restoration was occurring. The landlord's agreement to compensate the tenant while she stayed at the tenant's mother's home is confirmation that the landlord recognized that the tenant could not remain at the rental unit while the repairs occurred. There is undisputed evidence that the premises were being repaired and renovated for at least one full week of May 2013.

I find the landlord's payment of $100.00 or $200.00 (and the exchange of area rugs) to the tenant was insufficient compensation for the loss in value of her tenancy for May 2013, the last month of her tenancy. Given what transpired at the end of this tenancy and the tenant's concerns about the spread of mould spores within the rental unit during

the repair and renovation by the landlord and her male friend, I can understand why the tenant was reluctant to return to the rental unit with her family even after the premises were repaired. This was partially recognized by the landlord when she agreed to waive the requirement that the tenant provide her with at least 30 days written notice to end this tenancy.

In the absence of any receipt obtained by the landlord for her cash payment to the tenant, I find on a balance of probabilities that the tenant's assertion that $100.00 was paid by the landlord to the tenant at that time is the statement to be relied upon in considering the monetary compensation to be provided to the tenant for her loss of quiet enjoyment and the value of her tenancy for May 2013.

Under these circumstances, I find that the landlord is only entitled to retain the tenant's monthly rent for the period from May 1-13, 2013, when the mould under the floor was discovered. The tenant and her young family could clearly not remain in the rental unit during at least the one-week period of the repair and restoration, and likely longer. While I am satisfied that the tenant could have returned to the rental unit after the repairs and restoration had been completed, the landlord's actions in repairing and restoring the premises herself and with the assistance of her male friend rather than hiring qualified tradespeople to undertake this work contributed to the tenant's decision to refrain from returning to the rental unit. For these reasons, I allow the tenant a monetary award equivalent to the pro-rated amount of rent for the period from May 13-31, 2013, less the $100.00 payment from the landlord to the tenant. This results in a monetary award for her loss in value of the tenancy for May 2013 of $604.84 ($1,150.00 x 19/31 = $704.84 - $100.00 = $604.84).

While there was a loss in the value of this tenancy for May 2013, it was the tenant's decision to vacate the rental unit instead of returning to that unit after the repairs were completed. The landlord did not attempt to enforce the provisions of the *Act*, and agreed to allow the tenant to end the tenancy without providing written notice to end this tenancy in accordance with the time frames for doing so. For these reasons, I dismiss the tenant's application to recover her moving expenses without leave to reapply as I find that the landlord is not responsible for these expenses.

In considering the tenant's application for a monetary award of $3,000.00 for the replacement of her couch and $1,200.00 for damaged beds, I have taken into account the tenant's photographs, a copy of a payment slip, written evidence from the parties and the sworn evidence of the parties and their witnesses. The landlord and her witness gave sworn testimony and written evidence that the tenant's couch was stained and broken when the tenant vacated the rental unit. The landlord said that she was

unsuccessful in trying to sell it, and after storing it for some time, eventually discarded it. The landlord and her witness gave undisputed sworn testimony that the tenant returned to obtain one of the mattresses, but abandoned the other two. The tenant's photograph of the couch is unclear and appears to show the two stains referred to by the landlord and her witness. The tenant admitted that the couch was not new by the end of her tenancy, but gave changing evidence as to when she purchased it. At one point, she testified that she bought it in 2009, later changing her testimony to 2008, and finally a 2007 purchase date. She also submitted a receipt for the new couch she purchased on May 23, 2013 for $1,341.75. Based on a balance of probabilities, I find the written and sworn testimony of the landlord and her witness more reliable and consistent than that of the tenant with respect to the damage to the tenant's couch and mattresses. I dismiss the tenant's application to recover the costs of her couch and beds without leave to reapply.

Although I have also considered the tenant's claim for money borrowed from her family and friends and for personal suffering and pain, I find that she has not demonstrated her entitlement to monetary awards for any of these items. She provided few specifics or details regarding these portions of her claim, and other than her speculation that the health of her family was compromised by the condition of the improperly vented dryer, she has provided little evidence to support her claim in this regard.

Conclusion

I issue a monetary Order in the tenant's favour in the amount of $604.84.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 06, 2015

Residential Tenancy Branch