



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing by conference call and gave affirmed testimony. The tenant stated that she wished to have her father, T.A. attend and act as her agent for the hearing. The tenant's agent, T.A. (the tenant) confirmed receipt of the landlord's notice of hearing package and the submitted documentary evidence. The landlord's agent, K.N. (the landlord) confirmed receipt of the tenant's documentary evidence. Based upon the undisputed affirmed testimony of both parties, I find that both parties have been properly served with the notice of hearing package and the submitted documentary evidence as per section 88 and 89 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss and recovery of the filing fee?

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

Background and Evidence

This tenancy began on July 16, 2013 on a fixed term tenancy of 1 year until June 31, 2014 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,000.00 payable on the 1st day

of each month and a security deposit of \$500.00 was paid on June 7, 2013. Both parties confirmed that the rental property was an older building.

The landlord stated that the tenant vacated the rental unit on April 30, 2015. After completing the condition inspection report for the move-out inspection the tenant disagreed with the charges being sought by the landlord and did not sign the inspection report. The landlord stated the tenant's address was received via email on May 5, 2015 from the tenant's father.

The landlord seeks a monetary claim of \$456.03 for the cost of mould clean up/investigation costs as it has been determined that the mould found was "surface" mold caused by the tenant and not mould caused by any moisture penetration caused by a failure in the building envelope. The landlord has submitted a copy of a paid invoice for \$456.03 from B. Construction Ltd. dated February 28, 2015 which details,

Mould removal in corner of living room. Sprayed area and wiped down walls, window and baseboard heater. Ply floor. Removed drywall area of about 1-1/2' X 1-1/2'. Provided Photos. No mould was found inside wall cavity. Replaced drywall where cut out. Mud and sand. Paint two coats of paint. Reinstall baseboard.

The landlord relies on the submitted copy of the condition inspection report for the move-in dated July 16, 2013 which shows that everything was satisfactory and that there were no issues noted at the beginning of the tenancy. The landlord noted that there is no history of mould problems in the rental unit, nor have there been any reports of mould issues with the current tenants.

The tenant stated that the mould could have come from other sources, but did not provide any evidence of a likely source. The tenant stated that mould was likely caused due to the poor ventilation in the rental building due to its age and that the landlord failed to properly instruct the tenant on how to take steps to address the poor ventilation.

The landlord stated that during the tenancy the tenant had notified the landlord of a mould issue as noted in a copy of the submitted email dated February 3, 2015. Both parties confirmed that the landlord began investigating the mould issue as the tenant's agent had indicated that this would be the most logical step to investigate the mould. The landlord confirmed that there was no mould found by the contractor to indicate that there was any moisture behind the wall, but that it was confined to the interior surface.

Analysis

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, in part, as follows:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The Canada Mortgage and Housing Corporation (“CMHC”) has made related information available online, as follows: “Fighting Mold – Tenant’s Guide to Mold.” Various, and in part, the CMHC document reads in part as follows:

Cleaning up mold can be either the tenant’s or the landlord’s responsibility – or a responsibility – shared by the tenant and landlord.

Molds will grow when they have moisture and nutrients. If we keep things dry, molds do not grow. High moisture levels can be the result of water coming in from the outside, through the floor, walls, roof or plumbing leaks - when there is a weakness or failure in the structure. High moisture can also result when there is not enough ventilation to expel moisture produced by occupants’ daily activities like bathing, washing clothes or cooking.

In this case it was proven that there was no outside source for moisture to cause the mold as shown by the details of the contractors invoice. As such, high moisture was likely the result of not enough ventilation to expel moisture produced by the tenant’s daily activities like bathing, washing clothes or cooking.

Based on the documentary evidence and the affirmed / undisputed testimony of both parties, the related provisions of the Act, and other relevant information available in the public domain, I find the following as to the landlord’s claim.

Both parties confirmed that an issue of mould was reported to the landlord which was immediately investigated. The landlord retained a contractor to open the wall adjoining the surface mould to determine if there was any perimeter ingress of moisture. This was ruled out as the wall was found to be dry and free of mould.

I find on a balance of probabilities that the tenant contributed to the growth of mould in the unit, unwittingly, by establishing a routine of most likely a combination of inadequate heating and ventilation. The landlord provided undisputed affirmed testimony that there has never been any mould issues reported for this unit nor is there presently any mould issues with the current tenants.

Further, there is no documentary evidence before me from appropriate health or local government officials which speaks conclusively to building deficiencies as a contributing cause of this mould, either directly or indirectly. In other words, I am unable to find that the unit does not comply with “the health, safety and housing standards required by law,” the test established in paragraph 32(1)(a) of the *Act*.

I find that the landlord has established a claim for recovery of construction costs of \$456.03 to repair damage in the rental unit.

The landlord provided testimony that she continues to hold the tenant’s security deposit of \$500.00 plus interest from July 16, 2013 until the date of this decision. Over that period, no interest is payable on the landlord’s retention of the security deposit. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant’s security deposit plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the landlord’s favour under the following terms, which allows the landlord an award of recovering construction costs, less the security deposit currently held, plus the recovery of his filing fee

Item	Amount
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Recovery of Construction Costs for Damage	\$456.03
Less Security Deposit	-500.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$6.03

The landlord is provided with this Order in the above terms and the tenant must be served with this Order. Should the tenant 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: November 03, 2015

Residential Tenancy Branch

