



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC ERP MNDC MNR OLC PSF RP RR FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing and were given an opportunity to make submissions. Both parties acknowledged receipt of the other party's evidence.

The landlord testified that the 1 Month Notice to End Tenancy had been served to the tenants on December 15, 2015 by registered mail. The tenants did not dispute that the 1 Month Notice was sent to them by registered mail on this date. However, the tenants claimed that they don't generally use their front door so they did not receive the 1 Month Notice until on or about December 23, 2015.

With respect to the service of the 1 Month Notice, Residential Tenancy Policy Guideline No. 12 (in conjunction with section 88 of the *Act*), provides that "the legislation deems that a document not served personally, has been served a specified number of days after service: if given or served by mail, on the fifth day after mailing it..." The Guideline also provides that,

Deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary. Evidence contrary to these provisions could prove that the documents were received earlier...

and

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

I am satisfied by the evidence submitted on behalf of the landlord, including his testimony that he sent the 1 Month Notice to End Tenancy by registered mail on December 15, 2015. Therefore, the tenants would be deemed served with the 1 Month Notice to End Tenancy on December 20, 2015. I do not find that the tenants have provided sufficient evidence to satisfy me that the 1 Month Notice was received on a different date and further, I find that if the 1 Month Notice were received on December 23, 2015 by the tenants, it is as a result of their own neglect and no failure to sufficiently serve in accordance with the Act on behalf of the landlord. I find the tenants were deemed served on December 20, 2015.

Given that the tenants are required to make an application to cancel a 1 Month Notice within 10 days of receipt, and the tenants made their application on January 4, 2015, I find that the tenants have failed to apply in time to seek to cancel the Notice. I dismiss the tenants' application to cancel the 1 Month Notice.

Issue(s) to be Decided

As the 1 Month Notice to End Tenancy will not be cancelled, is the landlord entitled to an order of possession?

Are the tenants entitled to a monetary order for compensation for damage or loss?

Are the tenants entitled to an order requiring the landlord to comply with the Act?

Are the tenants entitled to an order to the landlord to make repairs to the rental unit?

Are the tenants entitled to an order to reduce rent for repairs?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on October 1, 2015 as a one year fixed term with a rental amount of \$1500.00 payable on the first of each month. The landlord holds a \$750.00 security deposit paid by the tenants at the outset of this tenancy.

On December 15, 2015, the landlord issued a 1 Month Notice to End Tenancy for Cause relying on the ground that;

Tenant or a person permitted on the property by the tenant has:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

Tenant has caused extraordinary damage to the unit or property.

The landlord testified that, by refusing the landlord access to the rental unit, the tenants have further exacerbated mold and other issues within the rental unit. The landlord listed the following dates that the tenants refused to allow access to the rental unit on November 14; November 21; December 4, 2015; and January 9, 2016.

The tenants testified that, as a result of the conditions in the rental unit, they are entitled to a reduction in rent of \$50.00 per month. The tenants also sought money in future moving costs as well as \$420.00 in an examination for mold. The tenants sought a total monetary amount of \$5300.00.

The tenants testified that the rental unit has "toxic black mold... in serious levels". They testified that they advised the landlord on several occasions and that he has taken no steps to fix the situation. They stated in their testimony that the landlord would promise to send someone to address the mold but that he would not follow through. The tenants submitted a "formal written letter requesting ...repairs/maintenance" including;

- Remediate Mold
- Outdoor water leak
- No working dishwasher
- Repair ceiling tiles in basement
- Replace back exterior door
- Replace wood cabinetry
- Remove scrap bicycles from property
- Replace furnace filter
- Add smoke detectors to the basement
- Refund money for mold expert: \$420.00

A mold assessment report dated December 17, 2015 submitted by the tenants. The report indicated that air sampling was done within the basement of the residential

premises. The report states that the “indoor air sample is considered significantly elevated. Several different mold spores were detected in the indoor air sample and not the outdoor sample at very high concentrations. In conclusion, the report states that the “basement mold concentrations pose a health risk to occupants” and “is not suitable for occupancy”. Professional mold remediation is recommended by the report.

The tenants also testified that they contacted the municipality. A letter addressed to the landlord dated December 7, 2015 was submitted as evidence. The landlord was given 14 days from the date of the letter to confirm that the issue of mold has been brought into compliance with the bylaws.

The landlord testified, supported by documentary evidence submitted, that he repeatedly sought to gain entrance to the rental unit to address the mold problem but that he was repeatedly denied access to the rental unit. The tenant also testified that the mold issue within the residence has been remediated and effectively resolved from the perspective of the landlord. The landlord confirmed that the municipality has been satisfied with his work to remediate the mold.

With respect to the tenants’ other complaints, the landlord testified that

- There is no outdoor water leak to address at this time;
- The dishwasher was replaced;
- It is unnecessary to repair ceiling tiles in basement;
- It is also unnecessary to replace back exterior door or replace wood cabinetry, replace the furnace filter or put smoke detectors in the basement
- They removed the scrap materials outside of their home themselves.

The email correspondence between the parties was submitted for this hearing. It contains ongoing reference by the landlord to attempts to make appointments to gain access to the unit as well as ongoing requests for the tenants to not threaten him.

The tenants testified that they want to move out but they can’t find a home that accommodates all of their children and pets. They agreed with the landlord’s testimony that the mold has been remediated and that the junk on the property is now removed.

Analysis

Over the course of the hearing, Tenant M continuously interrupted the landlord's testimony and, at some points, could not control himself. The landlord was generally calm in his testimony although he expressed equal frustration with this tenancy. In considering conflicting testimony from parties, a determination of credibility is crucial.

The test with respect to assessing credibility involves the consistency of testimony as well as the reasonableness of the testimony. In addition to the manner and tone (demeanor) of the witness' evidence, I have considered their content, and whether it is consistent with the other events that took place during this tenancy. The landlord's demeanor during the hearing has convinced me of his credibility. He answered all questions asked of him in a calm and candid manner, and never wavered in his version of what happened. The landlord made admissions with respect to the existence of mold and his excessive frustration at times. Moreover, the email and other documented correspondence from the tenants supported the landlord's version of events in many ways.

The tenants presented their evidence, on the other hand, in a way that was not entirely credible. It does not seem reasonable that someone would remain with their children and pets in a home that was "unfit for occupancy". Furthermore, given the nature of Tenant M's emails as well as his demeanor during this hearing, I accept the testimony of the landlord that Tenant M was both belligerent and threatening. Moreover, while the landlord acknowledges the mold situation in the residence, the tenants' evidence also supports the landlord's testimony that he took steps to remediate the mold and address the other items on the tenants' list of concerns about the premises.

I have considered the testimony of the parties in an effort to establish credibility in relation to the disputed testimony. I have also considered the burden of proof, which falls to the tenant as the applicant seeking a monetary order. The real test of the truth of the information provided of a witness must align with the balance of probabilities. In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the conditions that existed at the time. Considered in its totality, I find the evidence presented by the landlord more credible than that of the tenants.

Given that I accept the testimony of the landlord, I find that while there was mold in this residence, that it has been remediated and that the landlord made efforts to do so within a reasonable period of time. I also see proof in the correspondence of offers by the landlord to accommodate the tenants while work was done on the residence and while further work is to be done.

When a party claims for damage or loss, they have a duty to mitigate that damage or loss. The tenants continue to reside in the rental unit after four months while the

landlord attempted to enter the unit and address the mold problem in the rental unit. The tenants' correspondence provides evidence of their unwillingness to accommodate the landlords' contractors which lead to further delays in this process. Correspondence within the file includes cease and desist letters to the tenants from mold remediation companies that the tenant attempted to involve in this matter.

The tenants sought \$5300.00. The landlord acknowledges that mold existed within their unit and I accept their testimony regarding a loss of use of some space within the rental unit. I find that they are entitled to a portion of their claim as follows;

Item	Amount
Mold Investigation	\$420.00
Loss of use of basement: Nominal Amt - mold @ 300.00 per 5 month of tenancy	\$1500.00
Less Security Deposit	-750.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$1220.00

I find that the tenants are entitled to recover the cost that they incurred in having an inspection for mold conducted in the amount of \$420.00. I find that the tenants are entitled to a nominal amount for the lack of use of the basement in the residence. I find that the tenants are not entitled to anticipate moving costs as these costs would be eventual costs for the tenant in any event. I find that the tenants are not entitled to the cost of a new mattress as they did not provide proof of the cost of an old mattress, its age or the cost of its replacement or provide proof that the mattress succumbed to mold.

I find that the tenants have failed to apply in time to seek to cancel the Notice. I dismiss the tenants' application to cancel the 1 Month Notice. Based on the evidence submitted by the landlord for this hearing, I am satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. I accept the landlord's evidence to support the claim that the tenant(s) have significantly interfered with or unreasonably disturbed the landlord as well as putting the landlord's property at risk by delaying the landlord's ability to repair and remediate the interior.

I dismiss the tenant's application to cancel the notice to end tenancy. Therefore, pursuant to section 55 of the Act, I find that the landlord is entitled to an Order of Possession.

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Conclusion

I dismiss the tenants' application to cancel the notice to end tenancy.

I grant the tenants a monetary order in the amount of \$1220.00.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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.

I issue an Order of Possession to the landlord dated February 28, 2016.

The landlord is provided with a formal copy of an Order of Possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: February 22, 2016

Residential Tenancy Branch