



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants – MNDC, O, FF

For the landlord – MND, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants applied for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; other remedy; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants the landlord and an advocate for the landlord attended the conference call hearing gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The hearing was adjourned to allow more time to hear evidence and was reconvened on today's date. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only

the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

I refer the parties to s. 4(a) of the *Manufactured Home Park Tenancy Act* which states:

4 *This Act does not apply with respect to any of the following:*

(a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;

The tenants rent the mobile home and the pad from the landlord. The landlord has applied under the *Manufactured Home Park Tenancy Act*; however, as both the home and the pad are rented together then this falls under the *Residential Tenancy Act* and a decision has been made under the provisions of that *Act*.

Issue(s) to be Decided

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to seek other remedy under the *Act*?
- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy started on July 01, 2014. Rent is \$750.00 per month due on the 1st of each month. The tenants paid a security deposit of \$375.00 which has been dealt with at the end of the tenancy. The tenancy ended on October 15, 2015.

The tenants' application

The tenants testified that when they moved into the mobile home the landlord refused to do a move in condition inspection report. After about two months the tenants started to feel ill and experienced cold, shaking and coughing. The landlord was informed and said the tenants just needed to acclimatize. The tenants testified that around December of that year they said they would have to return to Calgary as their health was deteriorating. They had testing done with a homeopathic practitioner who found unusual things in both tenants' blood and recommended that they look under the mobile home for mould.

The tenants referred to the letter from this homeopathic practitioner who states, in part, that "toxins were found in the tenants' blood and the three things which stood out were yeast, fungus and chemical metal toxins, toxic colons, liver and kidneys and to check under the mobile home for mould, check the water quality and air quality; to wash all food with soap and water and rinse well. It is as if both tenants are receiving poisons from somewhere".

The tenants contacted Pro lab which is a mould analysis company who supplied the tenants with three test kits to take mould samples. The tenants did this and sent the kits back to Pro lab for testing. All three kits tested positive for mould and the report that came back shows the test done on the baseboards in the master bedroom shows there was not an elevated amount of spores; the master bedroom carpet test shows an unusual presence or former growth; the test done in the master bedroom air vent shows

elevated amounts. The tenants testified that this report backs up the findings made by their homeopath.

The tenants testified that the reports do not show toxic mould but does say extended exposure causes health problems the tenants experienced. The tenants testified that when they got the reports back they notified the landlord in writing on October 01, 2015 and stated that they wanted the landlord to compensate them. The tenants agreed that they did not ask the landlord to remediate the mould issues as two days after they wrote to the landlord the landlord gave them a 10 Day Notice to End Tenancy for unpaid rent or utilities on October 03, 2015. The tenants testified that a lawyer told them that they did not have to pay the rent and they gave the landlord Notice to End Tenancy on October 01, 2015 effective on October 15, 2015 due to the mould issues and testified that they had a right to move out once they had informed the landlord about the mould issues.

The tenants seek to recover the following costs -:

The cost for three mould kits for the tenants' mould testing - \$66.04

Shipping costs to send three mould test kits to Ontario - \$17.93

Costs to obtain test results for three kits at \$55.00 a kit - \$165.00

Cost to post mould test results to landlord's realtor to inform them of mould when mobile home was put on the market - \$8.75

The tenants testified that they moved out of the mobile home and moved into a hotel due to the mould. The tenants seek to recover the cost for meals for two people for 10 days at \$50.00 a day to an amount of \$ 500.00

The tenants seek to recover the cost of their medication to clear their health issues caused by mould. This was medication recommended by their homeopathic practitioner and no prescriptions were required. Cost of medication for the female tenant - \$758.93. Cost of medications for the male tenant \$704.78.

The tenants seek to recover the cost for hotels as they moved from the mobile home on October 05, 2015 to October 15, 2015. One hotel was at a cost of \$793.50 and the other hotel was \$100.57. After that time the tenants moved into their new residence.

The tenants seek compensation from the landlord of \$5,000.00 for the stress, health issues, and inconvenience and for punitive damages for injury, emotional upset, endangerment and malice.

The landlord disputed the tenants claim. The landlord's advocate testified that the tenants would not let the landlord into the mobile home to inspect it for mould. When the landlord did go in there was no visible signs of mould. The landlord paid for a handyman to come into the home to check for mould and he checked the entire unit including the attic and laundry room and found no visible; signs of mould.

The landlord listed the home for sale and the tenants then contacted the landlord's realtor and informed the realtor that the home had a mould problem. The landlord's realtor had to take the home off the market and the landlord then had to get a professional mould report done to prove there was no mould. The landlord's advocate referred to her mould report. This company conducted an indoor and outdoor test and only found very low mould spore counts that were well within the normal range. The professional testing carried out shows that persons living in the home would not be affected by this low spore count and this type of count is expected and normal. This testing was carried out on January 08, 2016 and the tenants' mould testing was not done by a professional company but rather by the tenants themselves.

The landlord's advocate testified that when the tenants first said they had mould the landlord felt they had little credibility as the landlord had lived in the home without any issues. The landlord's advocate testified that the landlord's professional lab report contradicts the tenants' own sampling report. The tenants had blamed the mould issues on a previous flood in the home but this is untrue. The toilet did cause some water to come out about eight years ago. The amount of water leakage was minor and this was

cleared up by the landlord. No other tenants since have experienced any health issues and if this water had caused mould to form eight years ago there would be signs of mould since then. The landlord's advocate testified that the tenants' symptoms are all in their heads and the blood analysis work done was not done by a certified doctor or health care practitioner and is a pseudo-science carried out by an unregistered homeopathic practitioner. The tenants did not provide any medical reports and the methodology of their home testing kits are not credible evidence when shown against the landlord's professional testing done.

The tenants testified that the landlord's advocate stated earlier that there was about a gallon of water which flooded the home eight years ago and this is not minor flooding.

The landlord's advocate testified that the Pro Lab report from the tenants states that these determinations are in no way to imply any health outcomes or final (financial) decisions based solely on this report. Pro Lab does not know how long anyone is exposed to mould and they should seek occupational or environmental health physician or professional advice. The landlord testified that the tenants did not seek professional medical advice or treatment and followed the advice of their homeopath whose credentials show she is only a blood analyst. The landlord questions the validity of the letter from the homeopath as it is not in a letter form or an email form but rather appears to have been sent to the tenants by the tenant and there is no evidence to show the qualifications of this homeopath.

The landlord's advocate testified that the medication list provided by the tenants shows that medications were purchased for other health issues such as an inflamed prostate and digestive problems. There is nothing to indicate what all this medication is for. The way to treat mould is to get rid of the mould if any exists and then to treat the symptoms with something like an antihistamine.

The tenants testified that the landlord's mould testing was not carried out until January 08, 2016 and does state that due to weather conditions the mould could be repressed.

The landlord's application

The landlord's advocate testified that the tenants failed to pay rent for October, 2015. The tenants were served a 10 Day Notice to End Tenancy for unpaid rent or utilities and they failed to pay the rent within the allowable five days. The tenants had given improper Notice to end the tenancy on October 01, 2015 and only provided 15 days' Notice. The tenants did not have reason to end the tenancy without proper notice.

The landlord's advocate testified that the landlord had claimed an amount of \$2,375.00 for repairs but reduces this claim to \$400.00 for the handyman's inspection for mould. The landlord had to engage a handyman to do this inspection because the tenants were so insistent that there was mould. When no evidence of mould was found in the unit the tenants should reimburse the landlord for this cost.

The landlord's advocate testified that the tenants failed to clean the carpets at the end of the tenancy. At the start of the tenancy the landlord had cleaned the carpets about two months before the tenants moved in and there was another tenant living in the home. The landlord agreed she did not complete a move in condition inspection report at the start of the tenancy.

The landlord's advocate testified that the tenants did not maintain the yard. The landlord had to get someone in to clean and tidy the yard and she also had to pull a lot of weeds. The rules of the park say that the yards must be kept to a good standard and the tenants failed to do this. The landlord seeks to recover \$280.00 for yard work and referred to the email from the person who conducted this work as to the work done and the amount charged.

The landlord's advocate testified that as the tenants had informed the landlord's realtor that the home had mould; the realtor had to then take the home off the market while the mould test was done. As the test came back showing no elevated mould present then the home was put back on the market. The landlord testified that the landlord incurred

costs for this action and seeks to recover \$413.70 for the professional mould testing and pad rent and utilities for the period when the home was removed from the market in December, 2015 and when it was put back on the market on February 24, 2016. The landlord had to pay three months of pad rent at \$224.00 a month to a total of \$672.00 and seeks to recover utilities to an amount of \$295.00.

The landlord seeks to recover \$5,000.00 for the emotional distress in dealing with the tenants' issues. At the time this was going on the landlord's husband was dying and the landlord was suffering considerable distress. The tenant also put off potential buyers by claiming there was mould and even when the landlord's handyman inspected the unit and found no mould, this still did not satisfy the tenants and they still contacted the landlord's realtor causing extra stress.

The tenants testified that they gave notice to end their tenancy on October 01, 2015 because of the mould issue. They had agreed the landlord could keep their security deposit but later wrote to the landlord and requested this be returned to them. The landlord did return it on or about October 12, 2015. The tenants agreed that no rent was paid for October, 2015.

The tenants disputed the landlord's claim for her handyman to look for mould. The tenants testified that the landlord should have got a professional mould company in to inspect for mould and not used a handyman who was not an expert.

The tenants dispute the landlord's claim for carpet cleaning. The tenants testified that they had asked the landlord to clean the carpets at the start of the tenancy but she said they were clean. As the landlord did not provide professionally cleaned carpet when the tenants moved in the tenants left the carpets in the same condition when they moved out and did not get them professional cleaned. There had been another tenant living in the home prior to the tenants moving in and he did not have the carpets cleaned.

The tenants disputed the landlord's claim for yard work. The tenants testified that when they moved in they had explained to the landlord that they suffered from bad backs and could not do yard work. The landlord said it was not a problem as she had a lady to do yard work. The landlord did not provide a tenancy agreement that stipulated that the tenants were responsible for yard work.

The tenants disputed the landlord's claim for costs incurred to get a mould inspection done. The tenants agreed they did inform a realtor that there was mould in the home and that the landlord could not sell it in that condition. The realtor had to take the home off the market and then the landlord got a mould test report done so the home could be put back on the market. It is the landlord's obligation to get a mould report done as soon as the tenants notified the landlord that there was mould in the home.

The tenants disputed the landlord's claim for costs incurred in having the home off the market for three months and for utilities. The tenants testified that these are costs the landlord would have had to have paid if the home was not sold. The realtor had a right to know the home had mould issues.

The tenants disputed the landlord's claim for \$5,000.00 for emotional distress. The tenants testified that they did not continually tell people about the mould problems. The landlord did not disclose these mould issues to the realtor or to the tenants when they moved in. The tenants testified that they never refused access to the landlord's realtor to show the house.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The tenants' application

I find the two tests for mould provided by the parties are contradictory of each other's results. The tenants testing shows some unusual presence or former mould growth on the carpet and elevated spore counts in the air vent of the master bedroom. The landlord's test report shows that the mould spore counts are low and considered to be in a normal range. These test reports were carried out within a few months of each other. The difference being that the tenants carried out their own testing using test kits and sent these off to be analysed while the landlord had a professional company come in to take air quality samples. While I accept that the weather may have had an impact on the landlord's testing I am not persuaded that the test results could fluctuate within a short time span.

I further find the tenants agreed that they gave notice to end their tenancy without offering the landlord the opportunity to inspect the home for mould or to take any remedial action if mould was found. The tenants appear to have based their concerns on blood samples conducted by a homeopath rather than a qualified doctor or health practitioner. There is insufficient evidence to show that any of the tenants' health concerns were caused from mould while living in this home and not a pre-existing health condition. Certainly the medication the tenants testified was recommended by their homeopath is clearly not all related to symptoms suffered from normal exposure to mould as some of the medication purchased and claimed for by the tenants is for other health concerns such as prostate problems and digestive issues.

It is therefore my decision that the professional testing done by the landlord's mould company is more credible and provided conclusive and reliable evidence that any mould spores were within the normal range as indicated on the report provided by the landlord in documentary evidence.

Consequently, the tenants' claim to recover the costs incurred for purchasing the three test kits, for the shipping costs to send the test kits and costs to obtain the test results is

dismissed as the tenants did not provide the landlord with opportunity to have the unit inspected to see if there was visible signs of mould before arranging a mould test.

With regard to the tenants' claim for sending their mould test report to the landlord's realtor; I am not persuaded that this was the tenants' responsibility to send anything to the landlord's realtor. Had the tenants informed the landlord's realtor of their test results then it was up to the landlord's realtor to get this information from the landlord and not the tenants. If the tenants choose to pass this information on and incurred a cost to do so then the tenants must bear this cost. This section of the tenants claim is dismissed.

With regard to the tenants' claim for meals and hotels; as I am not satisfied that the tenants suffered symptoms directly related to mould from the home and I am not satisfied that the tenants mitigated any loss by allowing the landlord to inspect and remediate any mould if it was found; then it is the tenants' choice to move into a hotel prior to giving the landlord this opportunity and as such the tenants must bear the costs incurred for the hotels and any meals. This section of the tenants' claim is dismissed.

With regard to the tenants' claims for medications; I have reviewed the lists of medications purchased and find there is insufficient evidence to show that the landlord is responsible to pay for these medications. The tenants' own mould report clearly recommends that the tenants seek the advice of a doctor or health practitioner and they used a homeopathic practitioner instead and have not provided evidence showing her credentials or qualifications. The tenants have provided insufficient evidence to show that the medications purchased were for the treatment of mould related illness as the medications lists clearly indicate other illnesses such as inflamed prostate, cardio problems and digestive problems. This section of the tenants' claim is dismissed.

With regard to the tenants' claim for compensation for inconvenience, stress and health and for punitive damages for emotional upset, endangerment and malice; I am not persuaded that the tenants' health was affected so severely from living in this home. Their evidence is inconclusive to show the effects to their health or emotional state. As I

have found the tenants did not mitigate the loss by allowing the landlord to inspect the home prior to the tenants giving notice to end their tenancy then I find the tenants' claim for compensation cannot be upheld. If the tenants suffered emotional distress then the tenants should have worked with the landlord to remediate their concerns prior to giving notice. This section of the tenants claim is dismissed.

The landlord's application

The landlord seeks to recover unpaid rent for October, 2015 of \$750.00. The tenants agreed that they withheld this rent because of issues with mould. I refer the parties to s. 26 of the *Act* which states:

26. A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

A tenant is entitled to end a tenancy without providing proper notice if the tenant can show that the landlord did not comply with the *Act* or a material term of the tenancy. As the tenants have insufficient evidence to show that there was a significant concern for their health due to the condition of the unit or that they gave the landlord the opportunity to comply with the *Act* then the landlord is entitled to recover all the rent for October as claimed to an amount of **\$750.00**.

With regard to the landlord's claim to recover the cost to carry out the mould inspection of **\$413.17**; I am satisfied that had the tenants not informed the landlord's realtor that there was mould in the unit which prevented the marketing of the landlord's mobile home then the landlord would not have incurred this cost. Consequently, I find he landlord may recover this cost from the tenants.

With regard to the landlord's claim to recover the cost of \$400.00 for her handyman to inspect for mould; I am not satisfied that the landlord is entitled to recover this cost. The

landlord had an obligation to do an inspection of the unit to confirm any visible mould after complaints were made by the tenants. I find that this inspection included all areas of the home and met the landlord's obligations under the *Act*. The landlord was then able to confirm that there was no visible mould in the home. This section of the landlord's claim is dismissed.

With regard to the landlord's claim for yard work of \$280.00; the tenants testified that they had informed the landlord that due to health issues they could not do yard work and the landlord agreed to have this done for them. The landlord's advocate testified that the tenants were responsible for yard work and when it was not done the landlord had to pay a lady to do it. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails. The landlord did not have a written tenancy agreement in place to outline the tenants' responsibilities for yard work and therefore without corroborating evidence to support the landlord's claim that this was the tenants' reasonability then the landlord has not met the burden of proof in this matter. This section of the landlord's claim is dismissed.

With regard to the landlord's claim for carpet cleaning; I refer the parties to the Residential Tenancy Policy Guidelines #1 which provides guidance on the issue of carpet cleaning and states, in part, that "the tenant is responsible for periodic cleaning of the carpets to maintain reasonable standards of cleanliness. Generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. Where the tenant has deliberately or carelessly stained the carpet he or she will be held responsible for cleaning the carpet at the end of the tenancy regardless of the length of tenancy". However, this guideline also states that "at the beginning of the tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair". The landlord testified that she had cleaned the carpets two months before the tenants moved in. The tenants disputed this

and testified that there was a previous tenant living in the home before they moved in and the carpets had not been cleaned. As the landlord has the burden of proof in this matter, without corroborating evidence to support her claim that the carpets were cleaned at the start of the tenancy then the landlord has not met the burden of proof in this matter. Consequently, I dismiss this section of the landlord's claim.

With regard to the landlord's claim for pad rent for three months and utilities of \$967.00; I have considered the evidence before me and find there is no indication that the unit had any serious offers made upon it before it was taken off the market in December 2015 in order to obtain the mould inspection report. The landlord has insufficient evidence to determine that the mobile home would have sold in that three month period and therefore the landlord would remain responsible for the pad rent and any utilities she choose to keep on during that three months. Consequently, it is my decision that the tenants cannot be held responsible for these costs and this section of the landlord's claim is dismissed.

With regard to the landlord's claim of \$5,000.00 for emotional distress, pressure, inconvenience and harassment; while I sympathise that the landlord was going through a difficult time caring for her husband who later passed away, the tenants cannot be held responsible for the distress this situation caused to the landlord. While the landlord's distress may have been exasperated by the tenant's actions the landlord must realise that as a landlord she must deal with things associated to the tenancy and has no reciprocal right to peace and quiet enjoyment under the *Act*. The tenants made certain demands upon the landlord concerning the mould and then gave notice to end their tenancy; however, these things are all normally associated with a tenancy and cannot be construed as harassment, inconvenience, pressure or emotional distress. Consequently, this section of the landlord's claim is dismissed.

As the landlord's claim has some merit I find the landlord is entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amounts pursuant to s. 67 and 72(1) of the *Act*.

Unpaid rent for October, 2015	\$750.00
Mould inspection	\$413.17
Filing fee	\$100.00
Total amount due to the landlord	\$1,263.17

Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,263.17**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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 07, 2016

Residential Tenancy Branch