



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX CREST REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD O FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on June 8, 2016. The Tenants filed seeking a \$13,376.99 Monetary Order for the return of all or part of their security and pet deposits; for other reasons; and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by the Tenants. No one was in attendance on behalf of the Landlords. The Tenants provided affirmed testimony that on June 9, 2016 the male Tenant attended the Landlord's business address to personally serve the Landlord with their application for Dispute Resolution, notice of hearing documents, and evidence. That business address was the same address listed as the Landlords' service address on the Landlords' application for Dispute Resolution which was heard on January 21, 2016 (file numbers regarding previous hearing are listed on the front page of this Decision). The Tenants stated the manager refused to take their hearing package and then called the police to have him removed from their address. Refusal to accept personal service does not negate or avoid service.

The Tenants subsequently served the Landlords with their application for Dispute Resolution; hearing documents; and evidence; via registered mail on June 12, 2016. The Tenants submitted evidence of the Canada Post tracking website which states the package was signed received on June 13, 2016.

Based on the undisputed evidence of the Tenants, I find that the Landlords were sufficiently served notice of this application for Dispute Resolution; hearing; and evidence; in accordance with Section 89(1) (c) of the Act. As such, I continued to hear the undisputed evidence of the Tenants.

Issue(s) to be Decided

1. Have the Tenants proven entitlement to the return of their security and pet deposits?

2. Have the Tenants proven entitlement to other monetary compensation for moving costs, loss of quiet enjoyment, and aggravated damages?

Background and Evidence

The Tenants responded to an advertisement to rent the house and arranged a meeting with the Landlords to see the property. When they viewed the property the house was empty and had been painted throughout.

The Tenants entered into a written fixed term tenancy agreement which began on September 1, 2015 and was not scheduled to end until August 31, 2017. Rent of \$3,600.00 was payable on or before the first of each month. On July 24, 2015 the Tenants paid \$1,800.00 as the security deposit plus \$1,800.00 as the pet deposit.

The Tenants testified that approximately one month into their tenancy the weather changed and became rainy and windy. Near the end of September 2015 / beginning of October 2015 they noticed a small water leak in their daughter's bedroom after a clump of ceiling material fell down. A larger clump fell down from the ceiling in the bathroom leaving a patch of black mold exposed.

The Tenants submitted evidence that they informed the Landlords of the water leaks and presence of mold in October 2015. The Landlord arranged to have various contractors attend the rental unit to inspect it and provide quote. Shortly afterwards the Tenants said they were told that the Landlords would be replacing the roof.

The Tenants requested that a proper mold inspection be conducted. They stated the Landlord sent someone who did not conduct a proper air / mold test of their unit. The person simply walked through the unit quickly with a meter and did not do a controlled test and the Tenants were not provided with a copy of the test results. They continued to request the work be done according to safety standards; however, the Landlord insisted on doing minor cosmetic repairs and kept telling them the only other work that would be done would be the roof replacement.

The Tenants testified that when their requests for proper repairs went unanswered they decided to look inside the attic to see what the condition was above the interior ceiling. The Tenants submitted photographic evidence which displayed numerous shower curtains that had been strung across the rafters in the attic to catch the water coming in from the holes in the roof. The Tenants asserted the attic was soaking wet and filled with moldy insulation. There were shower curtains everywhere and water leaks around

the fire place and in many places in the roof; as shown in their photographs which were taken on December 13, 2015.

The Tenants stated they had done their due diligence when trying to find a clean and safe home to live in for a minimum of two years and raise their disabled daughter. They argued that the Landlords failed to disclose the leaky roof and mold issues to them and instead the Landlords took action to cover up those issues by painting the entire house, over the existing mold, before they moved in. They stated that when they requested the Landlords repair the house to make it a safe and healthy environment the Landlords refused to deal with the mold issues.

The Tenants submitted evidence of a letter they wrote to the Landlords on November 19, 2015 seeking the required repairs. When the Landlords failed to complete the repairs in a safe manner they ended their tenancy and vacated the unit on January 19, 2016, as testified to in the January 21, 2016 hearing.

The Tenants now seek \$3,600.00 for the return of their deposits; \$7,200.00 an amount equal to two month's rent for living in an unhealthy condition causing a total loss of quiet enjoyment of their home; and \$2,576.99 for damages incurred due to unexpected moving costs.

Analysis

The *Residential Tenancy Act* (the *Act*) and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy *Act* states that without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 32(1) of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with **(a) 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 [my emphasis added with bold text].

Section 32(5) of the *Act* stipulates that a landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline 6 stipulates that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. That being said a tenant may be entitled to reimbursement for loss of use of a portion of the property or loss of quiet enjoyment even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Policy Guideline 6 provides that an arbitrator may award aggravated damages where a serious situation has occurred or been allowed to occur. Aggravated damages are damages which are intended to provide compensation to the applicant rather than punishing the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

Section 45(3) of the *Act* provides that if a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 72(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

I accept the Tenants' undisputed evidence that the Landlords failed to provide them a rental unit which complied with health, safety and housing standards required by law. I

further accept that despite the Tenants informing the Landlords of the issues of the rental unit the Landlords failed to make the rental unit suitable for occupation in breach of section 32 of the *Act*.

Based on the Landlords' failure to properly remediate the mold and water leaks, and in order to provide a safe living environment for their family, I find the Tenants had no other choice but to end their fixed term tenancy early, in accordance with section 45(3) of the *Act*.

I accept the undisputed evidence that the tenancy was devalued when the Tenants lost the full quiet enjoyment of their rental unit from the time they went up in the attic on December 13, 2015, saw the extent of the mold and water leaks, and until they moved out on January 19, 2016. As such I grant the Tenants monetary request for loss of quiet enjoyment in the amount of one month and six days at a daily rate of \$118.36 which is equal to **\$4,310.16** (\$3,600.00 + \$710.16), pursuant to section 67 of the *Act*.

In addition to the compensation for loss of quiet enjoyment, I must also consider the Tenants' submissions regarding the Landlords and/or owner's failure to disclose the presence of mold and the leaking roof at the time the tenancy agreement was being formed, pursuant to Policy Guideline 6.

The Tenants entered into a fixed term tenancy agreement and did not contemplate that they would move in only to find that 3 or 4 weeks later they would be faced with dealing with the stress and negative effects of a leaking roof, roof repairs, and possible health risks being exposed to mold; especially after having to deal with the stress of moving a few weeks earlier. I accept the Tenants' submission that had they been told about the leaking roof and mold in the attic and throughout the house, they may not have rented this property.

I further accept that the owner and Landlords knew of the leaking roof as someone had to have placed the shower curtains in the attic to try and catch the water. Therefore, I conclude that the Landlords and/or owner's failure to disclose the mold and leaking roof to the Tenants was an intentional act to secure a fixed term tenancy in attempts to ensure rental income throughout the duration of the repair project. Accordingly, I award the Tenants aggravated damages in the amount equal to one month's rent of **\$3,600.00**; which is an amount equivalent to what the Landlords would have to pay the Tenants if they served the Tenants a two month notice for landlord's use for repairs, pursuant to section 49 of the *Act*.

In regards to the Tenants' request for the return of their deposits, the Tenants confirmed the Landlords were awarded monetary compensation of \$3,700.00 in the previous Decision. As a result the Landlords would have been entitled to retain the security and pet deposits to offset their monetary award; pursuant to section 72(2)(b) of the *Act* which authorizes a landlord to deduct any amount the director orders a tenant to pay to a landlord, from the security and pet deposits. Therefore, I dismiss the Tenants' request

for the return of their deposits and any other amounts claimed in excess of the above awarded amounts, without leave to reapply.

The Tenants have partially succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the Act.

The Landlords are hereby ordered to pay the Tenants the sum of **\$8,010.16** (\$4,310.16 + \$3,600.00 + \$100.00) forthwith.

In the event the Landlords do not comply with the above Order, the Tenants have been issued a Monetary Order for **\$8,010.16**. This Order must be served upon the Landlords and may be enforced through Small Claims Court.

Conclusion

The Tenants were primarily successful with their application and were granted an \$8,010.16 Monetary Order.

This decision is final, legally binding, and 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: December 05, 2016

Residential Tenancy Branch