



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING SOCIETIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNSD, MNDC, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("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 obtain a return of all or a portion of their security deposit pursuant to section 38;
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;

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 parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

Both parties confirmed that the tenants have moved out and they no longer seek to have the One Month Notice to End Tenancy set aside, accordingly; I dismiss that portion of their application.

Issue to be Decided

Are the tenants entitled to a monetary order for compensation for loss or damage as a result of this tenancy?

Are the tenants entitled to a monetary award equivalent to the amount of their security deposits?

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

Background, Evidence

The testimony is as follows. The tenancy began on July 1, 2015 and ended on July 15, 2016. The tenants were obligated to pay \$1100.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$550.00 security deposit. Written condition inspection reports were done at move in and move out. The tenants testified that on Friday April 29, 2016 they noticed some mold and mildew inside one of their kitchen cabinets. The tenants testified that they also noticed some water and were concerned that there was a leak. The tenants testified that they left numerous messages with the answering service in attempts to contact the property manager to have someone investigate. The tenants testified that they were able to contact the manager on Monday May 2, 2016. The tenants testified that the plumber attended later that day.

The tenants testified that the plumber removed cheap plastic plumbing parts that “literally fell apart in his hands”. The tenants testified that the plumber cut out two large pieces of the drywall under the sink that were covered in mold and mildew. The tenants testified that they were concerned with being exposed to mold, but especially concerned for their two year old child. The tenants testified that the area that the plumber cut out was open and exposed until May 20, 2016. The tenants testified that the work was completed in full on May 25, 2016. The tenants testified that they had serious concerns about using the kitchen from May 4 to May 20. The tenants testified that if there was mold in the walls of the kitchen they did not want to prepare, wash or cook any food in the kitchen. The tenants testified that the property manager had a very casual attitude about the repairs and told them that there was no danger or threat of the mold getting them sick. The tenants testified that they felt they could no longer live in a place where the management seemed to have little interest in the well-being of their tenants and decided on June 2, 2016 that they would give notice to move out by July 15, 2016.

The tenants testified that they are seeking the return of their rent paid for May and June as compensation for having to deal with the mold issue. The tenants testified that they had signed off on relinquishing the security deposit for the two weeks of July, but now

seek the return of that as well. The tenants testified that they didn't know until after they moved out that there was asbestos in this building or they would have made a claim about that as well. The tenants testified that they paid \$950.00 for moving expenses and think that the landlords should pay \$475.00 of it. The tenants were told at the move out inspection that they didn't need to shampoo the carpets and are seeking the costs of renting a carpet cleaner of \$47.78 and the recovery of the \$100.00 filing fee.

The tenants are applying for the following:

1.	Return of Rent May 1-June 30	\$2200.00
2.	Return of Security Deposit	\$550.00
3.	Moving Costs	\$475.00
4.	Carpet Cleaning	\$47.78
5.	Filing Fee	\$100.00
	Total	\$3372.78

The landlord gave the following testimony. The landlord adamantly disputes the claims as made by the tenants. The landlord testified that she did the repairs as fast as possible. The landlord testified that the kitchen was fully functional except for half a day when she had the contractor install new cabinets. The landlord testified that when she became aware of the plumbing issue on the morning of May 2, 2016, she had a plumber come later that same day to repair the leak. The landlord testified that the tenants should have cleaned their cabinets more often to be aware of the leak. The landlord submitted that the amount of mold and mildew was not a result of a recent leak, but a slow ongoing one that the tenants neglected to report.

The landlord testified that the tenants were never at risk and that the contractor and the plumber she uses are very experienced in this type of repair and took the necessary measures. The landlord testified that she made attempts to work with the tenants and try to minimize the impact on their lives. The landlord testified that she thinks the tenants are being "very unfair" to ask for money when she did a really good job. The landlord testified that this repair was done professionally, properly and quickly. The landlord testified that the tenants tried to give notice to move out by July 15, 2016 but were told numerous times that the move out date was to be the end of July 2016.

The landlord testified that great efforts were made to accommodate the tenants and that new tenants were found for July 15, 2016. The landlord testified that the tenants did not

pay July's rent. The landlord testified that at the move out inspection the female tenant "signed off" and agreed to relinquish the security deposit to cover the rent for the two weeks of July.

The landlord testified that the tenants were to have the carpets professionally cleaned as per their tenancy agreement. The landlord testified that the tenants were not told at any time that carpet cleaning wasn't necessary. The landlord testified that she thought the matter was closed when the tenants relinquished their deposit.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

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. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. **To prove a loss the applicant must satisfy all four of the above elements.**

The tenants' position is they are entitled to compensation for two reasons; that the building has poorly maintained plumbing which caused a leak and mold and that the landlord did not address the mold issue in a reasonable, professional and timely manner. The landlord testified that they took over the building three months after the tenant's moved in and were never advised by the tenants of any poor plumbing or other maintenance deficiencies. Both parties confirmed that the landlord had issued notice to all tenants on April 24, 2016 that they would be doing a preventative maintenance check of each unit on May 4, 2016.

In the matter before me, the tenants have not provided sufficient evidence to meet the requirements of Section 67 of the *Act*; that the landlord was negligent or reckless in their actions to cause a mold issue or that they did not address the issue in accordance with

the Act. The landlord testified that the owners and the management company took over several months after the subject tenants moved in yet were never advised of any plumbing issues. Furthermore, I also find that it was relatively late in the tenancy when the tenant discovered mold and brought it to the landlord's attention. After being informed, I am satisfied that the landlord undertook to take steps in a timely fashion to address the tenant's concern. In addition, the tenants have not provided sufficient evidence that the mold was a health risk as they alluded to during the hearing. Also, the tenants made the choice of their own volition not to use the kitchen, not because it wasn't functional. The tenants had access to the kitchen virtually the entire time the repairs were being done, but chose not to use it.

Based on the all of the above, the tenants' request for the return of rent paid for May and June and moving expenses is dismissed.

The tenants request for the return of their security deposit is also dismissed as they had agreed that was to be applied for the rent for the first two weeks of July and as I have found that they are not entitled to any compensation.

The tenants request for the return of the costs to rent a carpet shampooer is also dismissed. Section 37 of the Residential Tenancy Act requires a tenant to leave a unit reasonably clean at move out. In addition, Residential Tenancy Policy Guideline 1 states that a tenant is to have the carpets shampooed at the end of their tenancy if the tenancy is one year or more. The tenants have cleaned the carpet and have met their responsibilities as required and are not entitled to the return of this cost.

The tenants have not been successful in their application.

Conclusion

The tenants' application is dismissed in its entirety.

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: January 24, 2017

Residential Tenancy Branch