



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC O

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for: a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and any other remedy...

Both parties attended the hearing and were given a full opportunity to be heard, to present their testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing: the landlord confirmed receipt of the tenant's application package with evidence.

Preliminary Issue: Landlord's Evidence Not Served

The landlord submitted 93 pages of evidence plus digital materials on May 3, 2017, 5 days prior to this hearing. The tenant testified that he had not received the landlord's materials. The landlord was unable to provide sufficient testimony to indicate whether he had served the tenant with his evidence. In considering whether to allow this late evidence to be considered, the Dispute Resolution Rules of Procedure are relevant,

3.14 Evidence not submitted at the time of Application for Dispute Resolution

Documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC office not less than 14 days before the hearing.

(emphasis added)

The landlord did not dispute that all of the materials submitted as evidence were available well prior to the day of this hearing. The Residential Tenancy Policy Guideline No. 12 states,

The purpose of serving documents under the Legislation is to notify the parties being served of matters relating to the Legislation, the tenancy agreement, a Dispute Resolution Proceeding or a review. Another purpose of providing the documents is to allow the other party to prepare for the hearing and gather documents they may need to serve and submit as evidence in support of their position.

... Failure to serve documents in a way recognized by the Legislation may result in the hearing being adjourned, dismissed with leave to reapply, or dismissed without leave to reapply. Failure to serve evidence properly may result in that evidence not being considered and the hearing proceeding, or the hearing being adjourned ...

Given the requirements of a fair and balanced hearing and that there was no representations made by the landlord as to why this matter should be adjourned, I find that it is necessary to exclude all of the landlord's evidentiary submissions.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss as a result of actions of the landlord?

Background and Evidence

This tenancy began June 2016. The tenant vacated the rental unit on October 27, 2016 after receiving the results of an inspection for mould within the rental unit. In a previous hearing and decision at the Residential Tenancy Branch, an arbitrator found that the landlord was entitled to retain the tenant's security deposit towards unpaid rent for November 2016. At this hearing, the tenant applied for a monetary order in the amount of \$25,000.00. The tenant did not provide a monetary worksheet to break down the details of the amount she sought.

The tenant testified that, within approximately a month of living in the rental unit, there were major repair issues. First, according to the tenant, the kitchen ceiling was leaking. The tenant was forced to vacate the rental unit and stay in a hotel for 2 days. The tenant testified that behind the shower wall, the toilet and in the kitchen, there were cracks in the walls and she feared there was mould and/or more leaks within the rental unit. She testified that the ceiling eventually caved in. At this point, the tenant testified that she had serious concerns with respect to water leaks and mould in the unit. Despite being on a fixed income with 3 children to care for, she testified that she arranged and paid for

the completion of a mould inspection of the rental unit. The tenant submitted a copy of the report prepared at the completion of the inspection. The mould inspection report found; there were a high level of mould spores in the kitchen area; there is hidden mould contamination affected by water intrusion within the walls and likely the ceiling as well; children or others without fully developed immune systems or with compromised immune systems should not live in this house; remediation of mould is required.

The tenant testified that, because the landlords would often send a repair man unsuited for the job and that they did not send a repair man right away, her children and her personal belongings were affected: her children had sinus infections and personal belongings (including children's clothing and toys) were damaged. The tenant testified that, even when she phoned the landlords to say that the ceiling had caved in, they did not phone or attend to the rental unit until the following day. The tenant testified that she paid approximately \$100.00 in total for her 2 night hotel stay after the ceiling caved in but she was unable to locate the receipts.

The landlord testified that she did not dispute that the tenant had a mould inspection done at her cost. The landlord confirmed that she had received copies of the report on more than one occasion but the landlord testified she had not been given a receipt for the report made with respect to mould therefore she had not reimbursed the tenant. The tenant testified that she provided a copy of the report to the landlord. The tenant provided a copy of the report for this hearing and I note the cost is \$350.00.

The landlord testified that she always tried to respond right away to the tenant's complaints. She provided phone records to show her attempts to reach the tenant. The landlord testified that, on at least two occasions, she phoned the tenant to ask if the landlords could come that same day to do repair work. On one occasion, the tenant was away and requested to be present and receive more notice from the landlord (as the landlord tended to call the same she required access to the unit). On the other occasion, the tenant was having a large thanksgiving dinner in her rental unit.

The tenant testified that, while still residing in the rental unit, she tried to carry on with life as normal because she has small children. However, she testified that all of the family had sinus infections on moving out of the residence and she believes it is as a result of the conditions of the rental unit.

Analysis

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the *Act*; a tenant is expected to pay rent; a

landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; “nominal damages” where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

Residential Tenancy Policy Guideline No. 1 provides clarification of the obligations of both rights and tenants under the *Act*,

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property.

In this case, the tenant has proven that the landlord failed to honour her legislated obligations and those of the residential tenancy agreement. I accept the testimony of the tenant that the landlord failed to act swiftly in responding to required repair requests by the tenant, even emergency repairs. I accept that the tenant lived outside the rental unit for 2 days after the ceiling caved in. I accept the testimony of the tenant that the residential premises were not maintained sufficiently during the time that her and her children resided in the rental unit. I accept the testimony of the landlord that, on occasion, she attempted to make repairs. However, I note that, due to the very short notice the landlord provided, she was unable to enter the unit to make the repairs on several different occasions. Furthermore, I accept the landlord’s testimony that she fixed the ceiling in the rental unit. However, again, there is a lack in timeliness of any repairs done by the landlord.

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. In this case, the claimant/tenant 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 landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Given all of the evidence provided by both parties, regarding the mould inspection, I find that the tenant made requests to have mould investigated and addressed but that, due

to the landlord's failure to respond in time, the tenant was required to pay for her own mould inspection. Furthermore, I accept the testimony of the tenant that if not for the mould report, she may have stayed in the rental unit longer. While the tenant cannot be compensated for her voluntary decision to vacate the residence, I find that the tenant is entitled to an award for the cost of the mould inspection and report in the amount of **\$350.00**.

While the tenant has not been able to prove, with receipts for her 2 day hotel stay, I do not doubt her testimony. I find that, while the amount of her loss has not been proven with documentation, she is entitled to an award in the amount of **\$100.00** for the cost of a hotel stay. However, I am not satisfied that the tenant is entitled to an award for damage to her belongings. I find that the tenant provided insufficient evidence and testimony with respect to the details of damage or loss of belongings.

I find that the tenant is entitled to an award as an affirmation that there has been an infraction of her legal right to both full use and quiet enjoyment of her rental unit. I assess this amount taking into consideration; the tenant's frustration in repeatedly requesting repairs of the landlord; the effect of the ceiling caving in; her monthly rental amount; length of ongoing repair issues (approximately 6 months); exposure and temporary sickness of all family members. I find that the tenant is entitled to **\$600.00** for loss of use and loss of quiet enjoyment of her rental unit.

Conclusion

I grant the tenant a monetary order in the amount of **\$1050.00**.

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

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: May 24, 2017

Residential Tenancy Branch