



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNDC MNSD FF

Introduction:

Both parties attended and gave sworn testimony. The tenant said that they served the Application for Dispute Resolution personally on the landlord on November 8, 2016 and the landlord agreed they received it. I find that the landlord is served with the Application according to section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Sections 7, 32, 33 and 67 for damages suffered due to lack of maintenance by the landlord and for reimbursement for an emergency repair;
- b) To obtain a refund of the security deposit; and
- c) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Has the tenant proved on a balance of probabilities that they have suffered damage and loss due to act or neglect of the landlord? If so, to how much compensation have then proved entitlement? Are they entitled to recover compensation for an emergency repair and the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy began on May 15, 2016, rent was \$1000 a month and a security deposit of \$500 was paid. The tenants confirmed they received a refund of their security deposit so that is no longer an issue. It is undisputed the tenants vacated on August 31, 2016 pursuant to a mutual agreement to end the tenancy.

The tenants said they noticed on August 15, 2016 that there was mould on a wall behind one of their beds. That tenant had been having respiratory problems since he moved in and when he saw the mould, he returned to the doctor who confirmed that the respiratory could be caused by the mould. A doctor's letter dated August 17, 2016 is in

evidence. The tenants said they were alarmed and asked the landlord about having a mould inspection done. They said he consented to them having it done but there was no discussion about reimbursement. The landlord told them they should move immediately. A mould inspection was done by a professional company; they did a fungal and moisture survey of this basement suite. They did a visual inspection, surface sampling. They noted furniture fungal staining on the furniture adjacent to the laundry room and said they noted moisture streaking on ceiling and walls in proximity to the dryer. They concluded this high moisture content introduced by drying clothes caused the fungal staining.

The company also noted fungal growth on living room drywall from photographs that indicated mould contamination. The tenant had removed this staining before the visual inspection. Lab tests were done of spores in the unit. The testing showed very high levels indicative of indoor fungal contamination which could be hazardous to health. Their opinion was the basement had to be remediated to be safe for occupancy. Other rooms noted similar problems.

They note the high level of mould infestation and mould spore is a result of water intrusion issues. They conclude that the high moisture content in the bathroom drywall indicates past moisture intrusion that was present before these tenants moved into the property and the water/moisture intrusion- temperature transfer issues were not addressed in a timely fashion so mould propagated in the wall cavities and was released into the open areas. The report notes also high levels of moisture in the bedroom flooring, probably due to water ingress from the exterior. They note visible fungal growth on the bed. They recommend remediation of the suite using special materials and that the bed should be discarded.

The landlord said a condition inspection report was done at move-in and no problems were noted. They also said the landlord had lived there for the six months prior to this tenancy and noted no problems. They suggested the living conditions of the tenant may have caused the issues. The tenant said there was no visible mould at the time of doing the condition inspection report but they could not see inside the walls where it propagated according to the report they obtained. The tenant pointed to the Professional Report which noted the indication was the mould growth pre-existed the tenancy due to very high stage of propagation inside the walls.

The tenant claims as follows:

\$78: refund of utilities for time of occupancy

\$3500: refund of rent for time of occupancy

\$404.97 for replacement of queen mattress – bought Nov. 15, 2015

\$85 for replacement of box spring bought Nov. 15, 2015
\$107 dump fees for discarded furniture infested with mould.
\$40 gas to and from the dump
\$598.50: for emergency mould inspection
\$500: for remediation –cleaning spores of remaining furniture and some from home.
\$46.77 +\$34.12+62.99 for cleaning materials and toxic mask to clean spores off items.

Invoices were provided to support the claims, a copy of the Professional Mould Inspection Report and a number of photographs. The landlord provided no documents to dispute the claim. On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], 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 67 of the Act does *not* give the director the authority to order a respondent to pay compensation to the applicant if damage or loss is not the result of the respondent's non-compliance with the Act, the regulations or a tenancy agreement.

I find the weight of the evidence is that the landlord violated the Act and tenancy agreement by providing housing that was infested with mould contrary to section 32 of the Act. While the landlord may not have known of the severity of the problem and even lived there themselves, I find the Professional Mould Inspection report and doctor's letter supports the tenants' credibility that they had respiratory problems from early in the tenancy. I find the report noted the high level of mould propagation in the wall cavities indicated that it pre-existed this tenancy. I find causes of water ingress and high moisture from the laundry room were noted as contributing factors. The tenant said that the landlord's dryer was not vented properly and moisture was directed into

their suite. I find this is supported by the mould report that noted the streaking of the water on the ceiling and walls of the laundry room and its possible contribution to the growth of mould on the tenant's living room furniture.

While the landlord noted the condition inspection report on move-in had listed no problems, I find the tenants explanation credible that they could not look inside the walls where the mould was reportedly propagating.

I find the tenant entitled to recover \$598.50 for the mould report, \$500 for emergency cleanup of furniture and other items, \$107 dumping fees and \$40 for gas to dump the contaminated items. I find them also entitled to recover \$143.88 for other cleaning materials and a mask. I find these claims well supported by invoices.

I find their bed was contaminated and had to be discarded. It was 8 months old. The Residential Policy Guidelines #40 assign a useful life to elements in rented premises which are designed to account for reasonable wear and tear. Furniture is assigned a useful life of 10 years (120 months). As this bed was 8 months old when discarded, I find the tenants entitled to recover 93% of its cost as invoiced for a total of \$377.97 for the bed and \$79.05 for the box spring.

The tenants have also requested a full refund of rent and utilities for the time they occupied the unit. However, I find they had their home there and used the utilities. They did not discover the problem until August 15, 2017 and moved out August 31, 2017. I find their peaceful enjoyment was significantly disturbed from the time they noticed the mould growth on walls, beds and furniture so I find they entitled to a rent rebate of 50% for 16 days only to take into account this significant disturbance and stress of finding the mould infestation. I find the doctor's note dated August 17, 2017 states there is likelihood the tenant's symptoms are caused by mould; there is no indication for how long these symptoms persisted or that they are definitely caused by mould. I find they are entitled to a rent rebate of 50% for the 16 days as they still had a place to live and use of the utilities for a total of \$258.06 refund of rent. ($\$1000/31 = 32.25$ a day x 16 days x 50%). I dismiss their claim for a further rebate of rent and utilities.

Conclusion:

I find the tenant is entitled to a monetary order as calculated below. Their security deposit has been refunded so is not included in the calculation. I find the tenant is also entitled to recover filing fees paid for this application.

Calculation of Monetary Award:

Professional Mould Report	598.50
Emergency remediation furniture etc.	500.00
Dumping fees	107.00
Gas to go to dump	40.00
Cleaning materials and mask	143.88
Allowable for bed replacement	377.97
Allowable for box spring replacement	79.05
Refund of rent -16 days	258.06
Filing fee	100.00
Total Monetary Order to Tenants	2204.46

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 23, 2017

Residential Tenancy Branch