



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNDC MNSD FF

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for damage and loss pursuant to section 67;
- authorization to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenants:

- a monetary order for compensation for loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the respective applications and evidence.

Issues

Is the landlord entitled to a monetary award for compensation for loss or damage?

Is the landlord entitled to retain all or a portion of the tenant’s security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Are the tenants entitled to a monetary award for compensation for loss or damage?

Are the tenants entitled to a return of all or a portion of the security deposit?

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

Background & Evidence

The tenancy for this apartment unit began on January 15, 2015 with a monthly rent of \$2711.00 payable on the 1st day of each month. The tenants paid a security deposit of \$1355.50 at the start of the tenancy which the landlord continues to hold.

Landlord's application:

The landlord is claiming \$420.00 in cleaning fees. The tenant did not dispute this claim except that it should be only \$400.00. The landlord agreed to reduce this claim to \$400.00.

The tenant also did not dispute the landlords claim for \$1500.00 in strata fines issued against the landlord for the unit being utilized as an Airbnb.

The balance of the landlords claim is for loss associated with mold in the rental unit. The landlord is claiming costs for a mold analysis report, restoration work to remove and repair mold damage, loss of rent for the period during which the rental unit was unavailable to rent due to the restoration work required and utilities expenses during the restoration period.

In support of its claim, the landlord submits that it responded to the tenants concerns with respect to mold issues in the rental unit. The landlord had mold analysis investigations performed which identified poor ventilation as the cause. The landlord points to its lease addendum which stipulates that exhaust fans must be on for a minimum of two four hour cycles per day or one eight hour cycle per day. The landlord submits the strata council also distributed memos to tenants instructing to keep windows open and to keep the dryer running for 20 minutes after completed dry cycles. The landlord further argues that the tenants neglected to properly ventilate the rental unit as they sublet the rental unit through Airbnb and did not live in the rental unit for a period of 23 weeks.

The tenants argue that although they did utilize the rental unit for Airbnb, it was only for a few occasions and only a portion of the house. The tenants claim they lived in the

rental unit for the entire period and were not negligent in ventilating the rental unit. The tenants allege there were issues with mold in the rental unit throughout the tenancy and they notified the landlord of their concerns since the beginning of the tenancy. The tenants submitted an e-mail they sent to the landlord dated January 26, 2015 (11 days into the tenancy) regarding a brown water mark on a ceiling. The tenants also submitted an e-mail dated March 22, 2015 by which they raised concerns of condensation/humidity build up in the second bedroom as well as a slight moldy smell. In this e-mail, the tenants stated they have tried leaving the bathroom fan on or crack a window open but it was not too helpful. The tenants also submitted additional e-mail correspondence dated April 26, 2015 notifying the landlord of a water spot on the laundry room ceiling and a leaking washer. The tenants also submitted an e-mail dated October 28, 2016 by which they notified the landlord of small streaks of black mold on the ceiling of the second bedroom. The tenants argue they took appropriate steps to combat the humidity such as leaving fans running all the time, purchasing and using a dehumidifier and even leaving windows open in the dead of winter. The tenants also submitted a letter dated December 29, 2014 sent by the owner to the Strata in which the owner makes reference to a prior larger roof leak and mold inside the rental unit. The tenants argue this letter supports their position that the mold issues were pre-existing.

Tenants' application:

The tenants are claiming loss of use of the den for 2 months and second bedroom for 4.5 months due to the mold and the period of time to complete the restoration work. The tenants are also claiming loss due to various personal belongings they threw out due to becoming infected with mold. The tenants did not present any documentary evidence of these mold infected personal items nor any evidence to support the amounts claimed for this loss.

The landlord submits the loss of any personal items was never brought to the landlord's attention nor was any concern of loss of use of portions of the rental unit. The landlord further submits the tenants were open to renew their lease so questions why they would want to renew in such circumstances.

Analysis

Landlord's application:

The landlord is awarded **\$400.00** for cleaning costs as agreed to by both the tenant and the landlord.

The landlord is awarded **\$1500.00** for loss resulting from strata fines as agreed to by the tenants.

I find that the evidence does not support a finding that the tenants were negligent in properly ventilating the rental unit and therefore responsible for the mold infestation in the rental unit. I find the landlord's assertion is mere speculation. As is often the case, the actual source of the mold is not easy to identify and even if it was the result of poor ventilation, it could just as easily be due to lack of a sufficient ventilation system in the rental unit versus the tenants' negligence. Further, the evidence supports the tenants' argument that mold concerns or water spots were brought to the landlord's attention shortly after the tenancy began. I also accept the tenants' testimony and evidence that they took steps such as purchasing a dehumidifier, running fans and leaving windows open to help combat the humidity concerns. I am therefore unable to find that the tenants should be responsible for any of the landlord's claims associated with mold in the rental unit and the remainder of the landlord's claims for compensation are dismissed.

As the landlord was only partly successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application from the tenant.

The landlord continues to hold a security deposit in the amount of \$1355.50. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Total entitlement for Landlord: \$544.50 (\$400.00 + \$1500.00 - \$1355.50)

Tenants' application:

I dismiss the tenants' claims for loss of use of the den and bedroom area as the tenants have not provided sufficient evidence that they suffered such loss. The tenants provided insufficient evidence with respect to the extent and timelines of any restoration work performed by the landlord which would have made these areas completely unusable. The tenants have also provided insufficient evidence that the extent of the mold infestation in these areas was so severe that these areas of the rental unit were no longer used or occupied.

The tenants' claims for loss of damaged personal items are also dismissed as the tenants failed to provide neither any evidence of the alleged damaged items such as pictures nor any receipts to demonstrate the value of these items.

As the tenants were not successful in their application, I find that the tenants are not entitled to recover the filing fee paid for this application from the landlord.

The tenants are not entitled to a return of their security deposit as the landlord is entitled to retain the entire deposit in partial satisfaction of the landlord's monetary award.

Total entitlement for Tenants: \$0.00

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$544.50. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced 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: August 15, 2017

Residential Tenancy Branch