



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNDC, MNR, RR

Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$25,000
- b. An order that the landlord pay the cost of emergency repairs paid by the tenant
- c. An order to allow the tenant to reduce rent for repairs, services, or facilities agreed upon by not provided.
- d. An order to recover the cost of the filing fee.

A hearing was scheduled for July 18, 2017 by conference call. Both parties attended. There was not sufficient time to complete the hearing and it was adjourned to September 6, 2017 by conference call. The Tenant appeared. The landlords failed to attend the September 6, 2017 hearing. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached.

All of the evidence was carefully considered. The tenant submitted 163 pages of documentation. The tenant testified on both hearing dates. She acknowledged that she had presented all of the relevant evidence that she wished to present. The landlords did not testify on the first day of the hearing and failed to attend the second date. As the landlords failed to attend the second day of hearing they did failed to take advantage of their opportunity to cross examine the Tenant. However, both filed affidavits and I determined it was appropriate to consider the affidavits as part of the evidence presented in this hearing.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlords by mailing, by registered mail to where the landlords carry on business February 11, 2017. I find that the Amendment to an Application for Dispute Resolution which includes the claim for the return of double the security deposit/pet damage deposit was sufficiently served on the landlords in late June 2017.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order including the cost of emergency repairs and the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on June 1, 2017 when the parties entered into a month to month tenancy. The rent was \$525 per month payable in advance on the first day of each month. The tenant paid a security deposit and pet damage deposit that totals the sum of \$525.

The tenancy ended on December 31, 2017 after the tenant gave written notice in late November. The tenant alleges the rental unit was uninhabitable. She testified that she and her pets moved out of the rental unit on November 5, 2016 although her belongings were not removed until late December.

The tenant seeks compensation for damages caused by the condition of the rental unit and additional costs incurred because she was forced to move because of the poor condition. She testified and provided considerable documentary evidence that she suffered serious health issues including a respiratory problem because of the mould. She further provided evidence that she now has asthma, active ibs, extreme hair loss and thinning of her hair, eczema, nose bleeds, coughing, sneezing, allergies and has had 3 separate month long viral infections since living there. She testified she has a weakened immune system. She also provided evidence that her pets also suffered significant problems because of the mould including an intestinal operation caused by something eaten by her cat and the treatment of her cat for mould related problems.

The affidavits filed by the landlords depose that the rental unit was habitable and that they responded appropriately when given notice of a problem by the tenant. Much of the evidence presented in the affidavits was not relevant to the issues before me. Both affidavits were sworn on November 29, 2016 and were filed to deal with a previous application. The affidavit of the KB included the following evidence:

- The tenant refused to sign the tenancy agreement although it had been left with the tenant.
- The tenant was 11 days late in paying the rent for October 2017.
- The tenant was rude and her actions have resulted in the complete breakdown of the residential tenancy relationship. She left multiple harassing voice messages
- The tenant was rude to the male landlord and he was denied access unless multiple day's notice was given.
- While the tenant had previously sent text messages saying that there may be an issue with the roof, we were not informed that the roof was actually leaking until October 11, 2016.
- We advised the tenant that a roofer would look at it on October 14, 2016.
- The roofer made 3 separate patches to two leaks on the roof between October 1, 2016 and November 1, 2016.

- The tenant was offered buckets to hold water before and while the roofer was fixing the leaks by the tenant refused.
- On multiple occasions we attempted to contact the tenant but were unable to reach her due to her shutting off her phone.
- The tenant demonstrated an unwillingness to help address the water issues.
- Her husband advised he has inspected the property and no mould was found.

The affidavit of MB sworn November 29, 2016 included the following evidence::

- The rental unit was previously rented for \$750 per month.
- The tenant was advised at the start of the tenancy that the repairs she was complaining of could not be completed until the end of the summer as there was nothing of an urgent nature requiring immediate attention.
- The any issues that arose with the tenant I responded to in a timely fashion and regularly replied to the Tenant regarding plumber and repairs.
- I attended the property on September 8, 2016 and no mould was found.
- The roofer attended the property on 3 occasions and provided three patch jobs for the roof. Once I became fully aware of the extent of the damage to the roof I had the full roof replaced and that was completed on November 21, 2106.
- At no time was the rental unit uninhabitable.
- The tenant had the ability to remain in the other bedroom in the property and to move her bed to the room where there was no leak.
- The tenant frequently paid the rent late.

Law

Section 32(1) and (5) of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with 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.

...

(5) 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.

Policy Guideline #16 includes the following:

16. Compensation for Damage or Loss

B. DAMAGE OR LOSS

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- loss of quiet enjoyment (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

C. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

....

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

D. AMOUNT OF COMPENSATION

In order to determine the amount of compensation that is due, the arbitrator may consider the value of the damage or loss that resulted from a party's non-compliance with the Act, regulation or tenancy agreement or (if applicable) the amount of money the Act says the non-compliant party has to pay. The amount arrived at must be for compensation only, and must not include any punitive element. A party seeking compensation should present compelling evidence of the value of the damage or loss in question. For example, if a landlord is claiming for carpet cleaning, a receipt from the carpet cleaning company should be provided in evidence.

Analysis

With respect to each of the Tenant's claims I find as follows:

- a. The Residential Tenancy Act provides that a landlord must return the security deposit/pet damage deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The tenant paid a security deposit and pet damage deposit totaling \$525 prior to the start of the tenancy in June 2016. I determined the tenancy ended on December 31, 2016. I further determined the tenant provided the landlord with her forwarding address in writing on February 14, 2017. The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. As a result I determined the tenants have established a claim against the landlord for double the security deposit or the sum of \$1050.

- b. After considering all of the evidence presented at the hearing including the affidavits of the landlords I determined the rental unit was uninhabitable and was dangerous to live in based on the following evidence:
 - The photographic evidence produced by the tenant show extensive water damage to the ceiling. The roof was eventually replaced by the landlord in the later part of November.
 - The tenant produced a report from Healthy Homes AQ who conducted an inspection on December 14, 2016 that stated: "Based on findings of the visual site investigation and testing, particularly due to the potentially pathogenic hydrophilic fungal produce present in the home. it is our opinion that the home interior is

considered a high risk for adverse health effects from mould contamination and that remediation and property protection is required at all times. Due to the nature of the fungal products and the visible damages observed, the remediation process should be undertaken promptly.” The report also states “Furthermore, it is our opinion that this home is unsafe to occupy at this time without proper protection.”

- I am satisfied that a significant mould problem existed in the rental unit from at least early October to the end of the tenancy. Little weight can be given to the landlord’s evidence in his affidavit of November 29, 2016 alleging no mould exists as it is in direct conflict with the evidence of the tenant and the professional contractor who conducted an inspection of the rental unit.
 - I determined the landlords failed to fulfill their obligations under section 32 of the Act and that the landlord was aware or should have been aware of the problems with the roof and the mould based on the following evidence:
 - The tenant provided copies of a large number of text messages requesting the landlord to make repairs including a text message to the landlord dated September 1, 2016 setting out a long list of repairs including there problem of water leakage.
 - The tenant produced the copy of a registered letter that was received by the landlord on October 14, 2016 identifying the extensive problem of the roof leakage.
 - The roof was initially patched in October but was not finally replaced until November 21, 2016.
 - The staining on the ceiling showed a water leakage problem.
 - The landlord’s failed to give oral testimony at the hearing as they failed to attend on the reconvened date. I am satisfied that much of the damage to the tenant’s belongings took place in October after ceiling opened up and the tenant did not have enough warning to move her belongings to avoid damage.
 - I determined the problem raised by the landlord with respect to gaining access to the rental property was caused by the landlord failing to give proper notice.
- c. I determined the Tenant is entitled to \$2047.50 for the cost of hiring a professional contractor to determine the nature and extent of the mould problem. The tenant and her pet suffered significant health problems caused by the mould. The landlord denied that a mould problem existed. In my view this amounted to a reasonable expense in order to determine whether the rental unit was safe for the tenant or any subsequent tenants.
- d. The monetary order worksheet claims \$2646.77 for the cost of vet expenses dealing with the treatment of the tenant’s pet(s). I determined the claims for injury suffered by the tenant’s pets was a foreseeable loss as the landlord was aware the tenant’s had pets. However, based on the evidence presented I determined the landlords are responsible for the cost of treating the pet for problems relating to the mould. I determined the

Tenant failed to prove the landlords are responsible for the cost of the operation. The tenant testified her cat ate a piece of something that fell from the ceiling. However, there is insufficient proof to establish this.

It is difficult to determine from the vet's detailed bill as to charges that relate to the operation compared with the charges that related to the treatment of the illness. The tenant did not have a breakdown available. However, based on the evidence presented I determined \$1600 of the bill relates to the operation and treatment around it. I determined the tenant has established a claim against to landlords recover \$1046.77 of the vet bill which represents the portion of the bill dealing with the treatment of the illness caused by the mould.

- e. I determined the tenant is entitled to \$25.74 to recover the cost of litter and scooper.
- f. The tenant claimed \$390.89 for the cost of a cat scratcher damaged by the water leak. The cat scratcher is 4 years old. The tenant testified you can expect a 20 life time for the scratcher. I determined the tenants estimate was unrealistic. However, I determined the tenant is entitled to \$250 of this claim.
- g. The tenant claimed \$1790 for the cost of replacing her mattress that was damaged by water and mould. The mattress was about 4 years old. I determined the tenant is entitled to \$1200 of this claim being the depreciated value of the mattress. I am satisfied the tenant did not have a reasonable opportunity to move the bed prior to the leak happening.
- h. The tenant testified she had to dispose of her duvet and duvet cover which cost \$590. She testified his was 3 to 6 years old. I determined the tenant is entitled to \$400 being the depreciated value of this item. I am satisfied the tenant did not have a reasonable opportunity to move the duvet and duvet cover to the leak happening.
- i. The tenant claimed \$3000 for the cost of replacing clothes. She had insurance which would have covered most of the replacement cost. However, her insurance company refused to pay because of the pre-existing condition of the rental unit. She estimated her loss of clothes to be \$3000. I determined the tenant is entitled to \$1500 of this claim being the depreciated value. I am satisfied the tenant did not have a reasonable opportunity to move her clothes prior to the leak happening.
- j. I determined that the failure of the landlords to remove the mould in the rental unit caused the tenant significant health problems. I determined the tenant is entitled to \$540 for the cost of massages which was recommended by her physician as part of the treatment.
- k. The tenant acclaimed \$1850 for the prescription cost of medication to treat her respiratory problems caused by the mould problems. This claim covers the medication for 2 years. I determined the Tenant is entitled to \$925 of this claim. The tenant failed to present sufficient proof to establish the mould would cause problems for 2 years claimed.
- l. The tenant claimed \$104 for the cost of a 4 year prescription of Immodium. I determined the tenant is entitled to \$26 for one year prescription as the tenant failed to provide

sufficient evidence to prove the problems of the rental will lead to health problems for 4 years.

- m. I determined the tenant is entitled to \$1150 for the cost of staying in alternative hotel accommodation from November 9, 2016 to December 9, 2016. I am satisfied the tenant's decision to vacate for health reasons was reasonable and she is entitled to this claim.
- n. The tenant claimed \$2100 for the reimbursement of rent for 4 months. The rental unit became uninhabitable in October. Prior to that date there were problems but they were so significant to amount to total reimbursement of the rent. Further, the tenant kept her furniture in the rental unit which prevented the landlord from making repairs. I determined the tenant is entitled to \$1200 of this claim.
- o. I dismissed the Tenant's claim of \$750 for the cost of the first month rent of the new rental unit. The Tenant failed to provide sufficient evidence to prove this claim as the tenant chose location and rental unit she was moving to. I determined it was not foreseeable that the tenant would move to a different community.
- p. The tenant claimed the sum of \$2000 for the cost of moving based on a quotation from a moving company. The tenant did not incur this expense. She moved on her own although it took her a number of trips. She testifies she moved to a different community in order to take a new job. I determined the tenant is entitled to \$400 of this claim. I do not accept the submission of the tenant that the landlord is responsible to pay the cost of the tenant moving to a different community in order to take a new job. In my view this claim is not foreseeable. However, I determine tenant is entitled to a reasonable sum to move to another rental unit in this community which I determined to be \$400.
- q. The tenant claimed \$837 for the cost of commuting to the hotel she moved to when she vacated the rental unit because of health concerns. The only hotel available was in a different community. The tenant failed to present sufficient proof to quantify this claim and as a result this claim is dismissed.
- r. The tenant claimed \$247 for the cost of the Fortis bill for the period of time she was not living in the rental unit. However, her belongings remained in the rental unit. I determined the tenant is entitled to \$150 of this claim.
- s. I determined the tenant is entitled to \$245 for the cost of a pet sitter. The tenant was able to go from her work to the rental unit in the middle of the day to allow her pets an outing. However, this was not possible when she moved to the hotel because of the distance involved. I determined this was a reasonable circumstance in the circumstance.
- t. I dismissed the tenant's claim of \$1258 for the cost of good based on the government schedule for daily food to employees. The tenant did not suffer this loss. While she may have incurred additional food expenses the tenant failed to provide sufficient proof to establish this claim and this claim is dismissed.
- u. I dismissed the tenant's claim of \$31.50 for Canada Post and \$343 for photocopies, photographs etc.as these claims relate to the cost of preparing for and prosecuting the claim. The only jurisdiction an arbitrator has relating to the cost of litigation is the cost of the filing fee.

- v. The Monetary Order worksheet filed by the Tenant seeks \$1899 for aggravated damages and the loss of quiet enjoyment.

Section 28 of the Residential Tenancy Act provides as follows:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 includes the following

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.”

I determined the tenant is entitled to \$1000 for the loss of quiet enjoyment. The Tenant lost the use of portions of the rental unit from the middle of October onward. I accept the Tenant's evidence that the landlord(s) failed to provide an emergency contact number. On several occasions the landlord arrived at the rental unit without giving the notice required by the Act. I also accepted the testimony of the tenant that the landlord harassed and threatened the tenant including calling her work and discussing her rental with people in the office. The landlord also threatened the tenant with the improper use of the bailiff for ending the tenancy and the removal of the tenant's belongings.

- w. I dismissed the claim set out in the Amendment to the Application for Dispute Resolution for aggravated damages as the tenant failed to prove that she could not be fully compensated by the other claims set out in her Application. I determined the situation does not warrant an award of aggravated damages. .

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$13,156.01 plus the sum of \$100 in respect of the filing fee for a total of \$13,256.01.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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: September 25, 2017

Residential Tenancy Branch