



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MND, MNDC, RP

Introduction

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, a monetary Order for money owed or compensation for damage or loss, and a monetary Order for damage.

It is apparent from the information on the monetary Order worksheet that the Landlord has applied retain all or part of the security deposit, and that matter will be considered at these proceedings. It is apparent from the information on the monetary Order worksheet that the Landlord has not applied for compensation for damage to the rental unit and that matter will not be considered at these proceedings.

The Landlord stated that his Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenants, via registered mail, although he cannot recall the date of service. The Tenants acknowledged receiving these documents and they were accepted as evidence for these proceedings.

The Tenants filed an Application for Dispute Resolution, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss and for an Order requiring repairs to the rental unit.

The female Tenant stated that the Tenants' Application for Dispute Resolution, the Notice of Hearing and documents the Tenants submitted with the Application for

Dispute Resolution were sent to the Landlord, via registered mail, on June 12, 2017. The Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

On June 13, 2017 the Tenants submitted an Amendment to an Application for Dispute Resolution in which they applied to cancel a Notice to End Tenancy for Unpaid Rent. The female Tenant stated that the Amendment was personally served to the Landlord on July 13, 2017 or July 20, 2017. The Landlord acknowledged receipt of this document.

On June 09, 2017 the Tenants submitted 10 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord with the Amendment to an Application for Dispute Resolution on July 13, 2017 or July 20, 2017. The Landlord acknowledged receiving the documents and they were accepted as evidence for these proceedings.

On June 09, 2017 the Tenants submitted a USB device to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord with the Amendment to an Application for Dispute Resolution on July 13, 2017 or July 20, 2017.

The Landlord acknowledged receiving the USB device. He stated that he could view the photographs on the device but he could not view the text messages the Tenants contend were on the device. As the Landlord contends he was unable to view any of the text messages on the device I refuse to accept those messages as evidence, pursuant to rule 3.10 of the Residential Tenancy Branch Rules of Procedure.

As outlined in my interim decision of August 08, 2017, I was unable to view any of the files on the device. As the Landlord acknowledged being able to view the digital images of the rental unit on the device, I find it appropriate that those images be accepted as evidence for these proceedings, providing the Tenants provide a USB device I am able to view.

The Tenants were given the opportunity to re-submit a USB device with the identical images to the Residential Tenancy Branch by September 15, 2017. I have not received a copy of that USB device and I am therefore unable to consider the images on that device during this adjudication.

On June 08, 2017 the Tenants submitted 4 pages of evidence to the Residential Tenancy Branch. On June 13, 2017 the Tenants submitted 1 page of evidence to the Residential Tenancy Branch. On July 14, 2017 the Tenants submitted 18 pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was personally served to the Landlord on July 13, 2017 or July 20, 2017. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

Preliminary Matter

The Tenants' application to set aside the Ten Day Notice to End Tenancy and the Landlord's application for an Order of Possession were addressed in my interim decision of August 08, 2017.

As this tenancy ended on August 13, 2017, as outlined in my interim decision, I find there is no need to consider the application for an Order requiring the Landlord to make repairs.

Remaining Issue(s) to be Decided

Is the Landlord entitled to a monetary Order for unpaid rent or utilities?
Is the Tenant entitled to compensation arising from a flood in the rental unit?

Background and Evidence

The Landlord and the Tenants agree that:

- this tenancy began on December 01, 2016;
- the Tenants agreed to pay monthly rent of \$1,000.00 by the first day of each month;
- no rent has been paid for June, July, or August of 2017;
- the Tenants paid a security deposit of \$500.00;
- the Tenants still have personal property in the rental unit; and
- the Tenants have not yet returned the key(s) to the unit.

The Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of June 19, 2017, was posted on the door of the rental unit by his

business partner on June 09, 2017. The female Tenant stated that this Notice to End Tenancy was personally served by the Landlord's business partner on June 09, 2017.

The female Tenant stated that they are not currently living in the rental unit, although they have left most of their personal property in the unit. At the hearing the Landlord and the Tenants mutually agreed to set aside the Ten Day Notice to End Tenancy that was served on June 09, 2017 and they mutually agreed to end this tenancy on August 13, 2017.

The female Tenant stated that there was a flood in the unit on June 01, 2017 and that the flood water disappeared into a crack in the foundation a short time after the flood was discovered. She stated that while they were investigating the flood the male Tenant pushed the wet drywall and it collapse, at which time they observed a large amount of black mold behind the drywall. She stated that the male Tenant broke away more of the drywall in an attempt to discover the extent of the problem and they discovered mold in several locations.

The female Tenant stated that the problem was reported to the Landlord's agent who came to the rental unit with a contractor. The Tenants contend that the contractor was "aggressive in his stand that nothing was wrong before he even entered the home"; that he told them the mold was not toxic; and he told them that most homes in the area have mold.

The female Tenant stated that they contacted a home inspector who told them they should not remain in the unit, so they moved to a hotel. She stated that the inspector did not provide them with a report because they did not pay for one although he told the Tenants the rental unit would not pass an inspection. She stated she does not know if the inspector tested the mold found in the unit.

The Landlord stated that on June 01, 2017 his agent informed him that there was a hole in the drywall, although he did not mention a flood. He stated that his agent asked a contractor to repair the drywall and was told the repair could not be completed until the Tenants' property was removed from the area. He stated that he offered the Tenants \$2,000.00 to move in an attempt to facilitate the repair, but they declined the offer.

The Tenants acknowledge that the Landlord offered them money to move out of the rental unit, although they contend he only offered \$1,500.00.

The Landlord stated that sometime in July he asked an inspector to inspect the rental unit for mold and was told the inspection would not inspect the property until the Tenants had vacated the property, as they were interfering with the inspection by photographing the inspector at work.

The Landlord acknowledged that the photographs submitted in evidence show that there is mold in the rental unit. He stated that he decided that the rental unit should not

be fixed until the time of the hearing because the Tenants would not move their property; the inspector would not inspect the house until it is vacant; and he cannot repair the unit until he knows the extent of the mold.

The Tenants contend that the person inspecting the house for mold on behalf of the Landlord consented to being filmed and he left after learning the mold was the subject of a legal dispute.

The female Tenant stated that they have not lived in the rental unit since they discovered mold in the unit on June 01, 2017. She stated that they did not give notice to end the tenancy after the mold was discovered as they had nowhere to move their property. She stated that they did not move their property from the unit because they did not believe it was safe to return to the rental unit after the mold was discovered.

The female Tenant stated that they did not submit any documentary evidence to corroborate the Tenants' belief that the mold presented a health hazard. She stated that it was the Tenants' understanding that the Landlord was obligated to submit a report to show that the mold did not present a health hazard.

The female Tenant stated that the Landlord informed the Tenants that he intended to replace the drywall and the some rotting sill plates but he did not intend to treat the mold as toxic and he did not intend to resolve the problem with the leaking foundation.

The Tenants contend that prior to the start of the tenancy the Tenants informed the Landlord that the female Tenant and her child were medically compromised and he assured them that previous water leaks had been repaired. The Tenants contend that after moving into the rental unit the health of both Tenants and the child slowly declined. The Tenants contend that a third party moved into the rental unit in May of 2017 and her health began to decline shortly thereafter.

The Tenants did not submit evidence from a medical practitioner.

The Tenants are claiming compensation for costs associated to being unable to live in the rental unit and they are seeking a refund of all rent paid.

The Tenants have claimed compensation for mailing costs and the cost of purchasing USB devices.

Analysis

On the basis of the undisputed evidence I find that the Tenants entered into a tenancy agreement with the Landlord that required the Tenants to pay monthly rent of \$1,000.00 by the first day of each month, and that the Tenants have not paid the rent that was due on June 01, 2017. As the Tenants are required to pay rent pursuant to section 26(1) of the *Residential Tenancy Act (Act)*, I find that the Tenants must pay \$1,000.00 in rent for June of 2017.

I specifically notice that section 26(1) of the *Act* requires tenants to pay rent when it is due whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.

Section 46(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due, by providing proper written notice. On the basis of the testimony provided by both parties I find that a Ten Day Notice to End Tenancy, served pursuant to section 46 of the *Act*, was received by Tenants on June 09, 2017.

As the Tenants did not fully vacate the rental unit on the effective date of the Notice to End Tenancy, which was June 19, 2017, I find that the Tenants remain obligated to pay rent, on a per diem basis, for the days the Tenants remained in possession of the rental unit. As the Tenants have already been ordered to pay rent for the period between June 20, 2017 and June 30, 2017, I find that the Landlord has been fully compensated for that period.

I find that the Tenants must also compensate the Landlord for the month of July, in the amount of \$1,000.00, as they remained in possession of the unit for that month. I find that the Tenants must also compensate the Landlord for thirteen days in August, at a daily rate of \$32.25, which equates to \$419.25.

The Landlord retains the right to file another Application for Dispute Resolution seeking additional compensation for unpaid rent or loss of revenue if the Tenants did not vacate the rental unit by August 13, 2017.

In considering the Landlord's application for unpaid rent I considered whether the Tenants had the right to withhold rent pursuant to section 33 of the *Act*. As there is no evidence that the Tenants paid for emergency repairs to the rental unit and then requested payment for those repairs, I cannot conclude that the Tenants had the right to withhold rent pursuant to section 33 of the *Act*.

In considering the Landlord's application for unpaid rent I have found no reason to conclude that this tenancy agreement was frustrated. Even if I accepted the Tenants' submission that the rental unit was uninhabitable due to mold, that is a situation that could be remedied by the Landlord.

There is a general legal principle that places the burden of proving that damage or loss occurred on the person who is claiming compensation for damages or loss. In regards to the claim for compensation for costs associated to being unable to reside in the rental unit, the burden of proof rests with the Tenants.

Section 32(1) of the *Act* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with health, safety, and housing standards required by law and, having regard to the age, character, and location of the rental unit makes it suitable for occupation by a tenant.

I find that the Tenants have submitted insufficient evidence to establish that they were unable to live in the rental unit as a result of mold. In reaching this conclusion I was heavily influenced by the absence of any evidence from an expert that corroborates the Tenants' submission that there is mold in the rental unit and that the mold poses a health risk.

As I do not have access to digital images that show the presence of mold in the rental unit, I was unable to consider those images when rendering this decision.

In adjudicating the claim for compensation as a result of mold I have placed little weight on the Tenants' submission that the mold has compromised the health of the occupants of the rental unit, as there was no medical evidence submitted that correlates the health of the occupants to the presence of mold.

As the Tenants have submitted insufficient evidence to establish that the mold in the rental unit rendered the unit uninhabitable, I dismiss their claim for compensation for costs associated to being unable to live in the rental unit and their claim for a rent refund.

The dispute resolution process allows a party to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow a part to claim compensation for costs associated with participating in the dispute resolution. I therefore dismiss the Tenants' application for mailing costs or the cost of purchasing USB devices.

Conclusion

The Landlord has established a monetary claim, in the amount of \$2,419.25 in unpaid rent. Pursuant to section 72(2) of the *Act*, I authorize the Landlord to keep the Tenant's security deposit of \$500.00, in partial satisfaction of the monetary claim.

Based on these determinations I grant the Landlord a monetary Order for the balance of \$1,919.25. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: September 19, 2017

Residential Tenancy Branch