



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for compensation for loss under the *Act* and for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Was the landlord negligent in responding to the tenant's requests for mould remediation and the restoration of heat inside the rental unit? Is the tenant entitled to compensation and to the recovery of the filing fee?

Background and Evidence

The tenancy started on January 15, 2017. The rental unit is a self-contained suite attached to the side of the landlord's home.

The tenant testified that right from the start of tenancy she found the heating inside the unit was inadequate and by the end of January 2017, she noticed that there was mould around the windows and in the corners of the rooms and closet. The tenant stated that she informed the landlord of the problem as soon as she noticed it.

Both parties described a visit by the female landlord to the rental unit sometime in the middle of March 2017 and the conversation that took place during that visit. The testimonies of both were contradictory. The tenant stated that she complained about the lack of heat and pointed out the mould in the unit. The landlord stated that the conversation was about installing a peep hole in the front door of the suite and about the clutter on the walkway by the rental unit.

The landlord denied having discussed or seen any mould in the rental unit but stated that she noticed condensation around the windows. The landlord testified that she asked the tenant to use a dry cloth to wipe it off. The landlord also stated that she asked the tenant to wipe down these areas with a "spray".

Both landlords stated that they had never seen any mould inside the rental unit. The tenant filed photographs taken at the end of tenancy showing the presence of an extreme mould infestation that was in the walls, carpet and ceiling. The landlord also filed photographs showing clean walls without a trace of mould. The walls and baseboard appeared to have been recently painted. The landlord agreed that the photographs were taken about a month prior to this hearing which is two weeks shy of one year since the end of tenancy.

The landlord stated that based on the tenant's complaint of lack of heat, he hired a plumber to investigate the problem. To support his testimony, the landlord filed two invoices from the plumber dated January 27, 2017 and February 24, 2017. The plumber recommended that furniture be moved away from the base board heaters to improve the transfer of heat.

The tenant stated that she was forced to use her own heater which would result in the tripping of the fuse. The tenant testified that the landlord asked her to stop using her heater and provided the tenant with a heater that used less power. The landlord denied having loaned the tenant a heater.

The tenant filed copies of multiple text messages to the landlord asking him to increase heat in the rental unit. Between March 06, 2017 and April 13, 2017, the tenant sent seven text messages to the landlord regarding the problem. The tenant stated that the problem continued until the end of tenancy.

The tenant also stated that at the time she was viewing the suite with intention to rent it, she informed the landlord that she had a pet bird. The tenant testified that the landlord asked for a photograph of the bird and she provided him with one. The landlord denied having any knowledge of the bird and stated that the tenancy agreement clearly specified that pets were not allowed.

The tenant filed photographs of the bird before and during the tenancy. She stated that due to the mould and lack of heat the bird got very sick and lost his feathers. The tenant did not want to leave the bird in the rental unit during the day because of the cold and therefore she drove the bird to her boyfriend's home while she was at work.

The tenant is claiming the cost of doing so. The tenant stated that she got sick too, was prescribed antibiotics and had to miss work for a few days. The tenant is claiming the cost of vet bills, cost of transporting her pet bird to and from her boyfriend's home and the loss of income she incurred when she was too ill to work. The tenant filed copies of vet bills and a note from her employer about the number of days of work missed by the tenant when she was ill.

The tenant also stated that the mould was so prevalent that it got into her clothing and food, resulting in her having to throw away food and do extra laundry on a regular basis. The tenant is claiming the cost of both. The tenant also stated that eventually she had to dispose of her clothes and is claiming the cost of replacing them.

The tenant testified that on April 01, 2017, the landlord served her with a letter asking her to move out by May 01, 2017. This notice to end tenancy was not in the legislated format. The tenant stated that given the situation with the mould and lack of heat, she decided to move out by May 01, 2017, as per the end date of tenancy, on the notice to end tenancy. The tenant stated that she had to buy moving boxes and get movers. The tenant is claiming the cost of both.

The tenant testified that the cost of cable was included in the rent but she was without cable starting March 2017. The landlord stated that the entire house was provided with cable and this service was ongoing. The landlord filed copies of cable bills to support his testimony that the cable service was not discontinued but agreed that the service package was altered.

The tenant is claiming the following:

1.	Return of rent for four months	\$3,000.00
2.	Cost of moving boxes	\$100.00
3.	Movers	\$440.00
4.	Replace clothing	\$1,000.00
5.	Replace food	\$500.00
6.	Missed work	\$1680.00
7.	Vet bills	\$100.00
8.	Transport bird	\$800.00
9.	Extra laundry	\$800.00
10.	Loss of cable	\$100.00
11.	Filing fee	\$100.00
	Total	\$8,620.00

Analysis

Based on the documentary evidence and sworn testimony of both parties, I find as follows:

1. Return of rent for four months - \$3,000.00

The tenancy started on January 15, 2017 and ended on May 02, 2017. The tenant paid rent for a total of 3.5 months but is claiming the return of rent for four months. The tenant occupied the rental unit and is therefore required to pay rent. Accordingly, the tenant's claim for the return of \$3,000.00 is dismissed.

However based on the testimony of both parties and the documents filed into evidence by both parties, I find on a balance of probabilities that it is more likely than not that the rental unit was inadequately heated and had a mould infestation. The landlord demonstrated that he made efforts to investigate the source of the inadequate heating by hiring a plumber to check out the heating system. However apart from a recommendation for the tenant to move furniture away from the baseboards, the plumber did not carry out any repairs and the tenant continued to find that the unit was not properly heated.

The parties provided contradictory testimony about the heater that the tenant stated was provided to her by the landlord. The landlord denied having provided the tenant with a heater. The tenant described the landlord's heater as an older appliance which was supposed to use less power. Based on the testimony of both parties, I find that the tenant's testimony was credible which leads me to find on a balance of probabilities that it is more likely than not that the landlord offered the tenant a heater when her heater tripped the power fuses, to compensate for the lack of proper heating in the rental unit.

In addition the landlord's testimony with regard to the heating was not credible as he described the heating system in detail as radiant heat when the plumber's invoice and the photographs show the heating was baseboard heating.

The parties provided contradictory testimony for most part and even filed photographs that portrayed the rental unit in completely opposite conditions. The photographs provided by the tenant show an extreme mould infestation while those of the landlord show the opposite. The landlord agreed that his photographs were taken almost a year after the tenancy ended while the tenant stated that her photographs were taken at the end of tenancy.

Based on the above, I find on a balance of probabilities that it is more likely than not that the rental unit was inadequately heated and that there was an existence of a mould infection which caused the tenant all sorts of problems. Accordingly I find that the value of the tenancy was reduced and I will award the tenant an arbitrary amount towards this loss of value.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly, I award the tenant a minimal award of \$1,000.00

2. Cost of moving boxes - \$100.00
3. Movers - \$440.00

The tenant received an invalid notice to end tenancy and therefore could have disregarded the notice and continued to occupy the rental unit. The tenant chose to move out and accordingly is not entitled to her claim for moving boxes or movers.

4. Replace clothing - \$1,000.00
5. Replace food - \$500.00

The tenant did not provide documents to support the expense she incurred to replace clothing and food. However since I have determined the presence of a mould infestation, I find that the tenant is entitled to a nominal award pursuant to *Residential Tenancy Policy Guideline #16* as described above. Based on this policy and my findings, I award the tenant a minimal award of \$200.00 towards the replacement of clothing and \$100.00 towards the replacement of food.

6. Missed work - \$1,680.00

The tenant did not provide sufficient evidence to link her time off work with the presence of mould in the rental unit. Therefore I dismiss the tenant's claim for \$1,680.00

7. Vet bills - \$100.00
8. Transport bird - \$800.00

The tenancy agreement clearly stated that pets were not allowed. Even though I find it is possible that the tenant informed the landlord about the pet bird prior to the start of tenancy, the landlord denied having been notified about the pet. Therefore I must dismiss the tenant's claim for the vet bills and for the cost of transporting the bird.

9. Extra laundry - \$800.00

Since I have determined that there was a mould infestation in the rental unit, I find that the tenant would have needed to do extra laundry during the 3.5 months of tenancy. However I also find that the tenant's claim is excessive and I will award her a reasonable amount for the cost of doing extra laundry. Accordingly I award the tenant \$200.00.

10. Loss of cable - \$100.00

The landlord filed sufficient evidence to show that there was no interruption to cable service. Accordingly I dismiss the tenant's claim.

11. Filing fee - \$100.00

Since the tenant has proven most of her claim, she is entitled to the recovery of the filing fee of \$100.00

The tenant has established a claim as follows:

1.	Return of rent for four months	\$1,000.00
2.	Cost of moving boxes	\$0.00
3.	Movers	\$0.00
4.	Replace clothing	\$200.00
5.	Replace food	\$100.00
6.	Missed work	\$0.00
7.	Vet bills	\$0.00
8.	Transport bird	\$0.00
9.	Extra laundry	\$200.00
10.	Loss of cable	\$0.00
11.	Filing fee	\$100.00
	Total	\$1,600.00

Overall the tenant has established a claim of \$1,600.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$1,600.00**.

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: April 25, 2018

Residential Tenancy Branch