



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD, FFT

Introduction

This is an Application for Dispute Resolution (the “Application”) brought by the Tenant requesting a monetary order for damages from mold and rat infestation in the rental premise in the amount of \$3,148.00 and for the return of the security deposit of \$575.00. The Tenant also requests an order for payment of the filing fee of \$100.00.

The Tenant and the Landlord’s legal counsel were present for the scheduled hearing. I find that the notice of hearing was properly served and that evidence was submitted by all parties. There was a question raised by the Landlord’s counsel that he had not received a monetary order worksheet, which the Tenant did not consider his “evidence” but rather an internal form for the RTB.

That document consisted of an amount for a mattress, for acupuncture treatments and a general amount for loss of usable space, the total of which was provided to the Landlord in the Dispute Notice; as the Landlord had the opportunity to hear all evidence in support of those claims, and to cross examine the Tenant directly on all the direct evidence he had submitted to the Landlord, I find that there was no prejudice to the Landlord for not receiving the monetary worksheet. Although all evidence was taken into consideration at the hearing, only that which was relevant to the issues is considered and discussed in this decision.

The hearing process was explained and parties were given an opportunity to ask any questions about the process. The parties were given a full opportunity to present affirmed evidence, make submissions, and to cross-examine the other party on the relevant evidence provided in this hearing. The Application was amended to correct the Landlord’s last name, with consent of her legal counsel.

Issues to be Decided

Is the Tenant entitled to compensation for damages and expenses, pursuant to section 67 of the *Residential Tenancy Act* ("Act")?

Is the Tenant entitled to the return of his security deposit, pursuant to section 38 of the Act?

Is the Tenant entitled to payment of the filing fee, pursuant to section 72 of the Act?

Background and Evidence

This tenancy began on September 1, 2016 and ended on June 15, 2017 after the Tenant vacated due to purported poor conditions in the rental unit, which is a two-bedroom cabin. The monthly rent was \$1,150.00, with a \$575.00 security deposit.

The Tenant states that there was no move-in inspection and that he noticed by November that it was very moist and humid inside the cabin. He began storing personal items away to prevent damage and obtained a dehumidifier to deal with the high humidity, for which the Landlord reimbursed the cost. By December 29, 2016, the Tenant had grown quite concerned with issues of mold and a rat infestation, and stated his concerns in an email to the Landlord:

"I would like to bring up a couple of issues we have been having with the cabin. We were moving around some furniture in the fall, and discovered a lot of mould. We ended up discarding a lot of things we deemed to be irrecoverable, and also got a dehumidifier to help with the moisture. I am not concerned about our processions [sic], but I am concerned about our health as certain mould types can be quite harmful. I was hoping you could get someone in to check the cabin for any potential health threats re: mould.

The other issue is that we have had some damage to items in storage due to rodents of some sort. If you could inform us of when he will next be by, that would be great."

By January 19, 2017, the first mold report was completed and a copy was submitted into evidence. It found higher than normal mold levels and provided recommendations including using peroxide to clean surfaces. The Tenant states that he and his fiancé, KE, spent considerable time trying to clean surfaces to deal with the issue, but that the Landlord made no effort to address the problem, which worsened.

Around this same time, the Tenant states that a pest control service was coming by and it became apparent that there was a pre-existing pest infestation issue that the Landlord had been aware of. The worker stopped by on many occasions trying to locate and cover holes and openings with mesh screens to prevent access by rats, as well as set traps to kill those inside the attic area. The Tenant had to move belongings into the second bedroom to avoid further rat damage, having noticed that Tupperware containers storing items had been chewed through; the Tenant states he is not making a claim for the personal items that were damaged, but stated that there was a lot of damage from the rats. By April of 2017, the pest control service reported that the rat infestation appeared to be gone.

The Tenant states that he and his fiancé began experiencing symptoms which could be related to mold exposure. He did not seek medical treatment, but his fiancé had a series of acupuncture treatments to treat allergy-like symptoms and trouble breathing. He states that the treatments worked for a time, but then the symptoms returned and he continued to communicate his concerns to the Landlord; he claims that his fiancé's symptoms subsided after they moved out. He produced receipts and claimed \$350.00 for the treatments.

A second mold inspection and report was done on May 10, 2017 and that report was submitted into evidence. It found moderately high levels of mold, this time inside walls and the main structure of the building. Surface cleaning would not suffice and remedial work was necessary. The Landlord suggested the affected walls be removed in June at a time when the Tenant was not home for a few days.

The Tenant, frustrated by the issues concerning the living conditions at the cabin and growing health concerns, ended the tenancy with an email dated June 5, 2017, effective July 1, 2017. The Tenant provided his forwarding address to the Landlord in their mailbox in June and requested the return of the security deposit. There was no move-out inspection completed and the security deposit was not repaid; the Landlord responded in a letter late July stating that two month's notice was required to end the tenancy and that some furniture had been left behind. The Landlord offered to pay the security deposit and forego any claim for lost rent, if the Tenant would not pursue any claim with respect to the tenancy. The Tenant filed this claim on May 2, 2018.

The Tenant is claiming \$350.00 for the acupuncture treatments his fiancé underwent, \$447.90 to replace his mattress which was damaged by mold and \$2,350.00 for other losses. He submitted an advertisement for a similar mattress, as the mattress he

owned could not be cleaned; photographs were provided, and the damage is noted in the mold report.

The balance of the claim was for inconvenience and loss of use of part of the cabin, having to move personal belongings to the second bedroom for much of the tenancy to protect it from damage due to the condition of the premises. He compared the average cost of a two bedroom cabin versus a one bedroom and found that the difference was about \$250.00 per month and basically included this as part of his claim for general damages of \$2,350.00. The Tenant stated that toxic mold was present, as were rats, and that the Tenant tried to deal with the issues and notified the Landlord, who acted too slowly, making some problems worse.

The Landlord's counsel expressed a concern that the fiancé was not a named party and that this decision would not identify her by name, making it difficult to preclude a tort claim the future; however, the Tenant did state that his fiancé had no intention of launching a tort action against the Landlord for her health concerns and that this claim was the only one that would be made.

The Tenant also claims the return of his security deposit of \$575.00, doubled to \$1,150.00 for the Landlord's failure to return it or file a dispute within the required time period.

The Landlord's counsel responded by stating that under section 45(1) of the Act, the Landlord was entitled to a full month's written notice to end the tenancy, which meant she was entitled to July rent. He requested to off-set any award by this amount; this was denied as the Landlord has not filed any claim with the RTB for my consideration. He admitted that "one could view the tenancy as frustrated" when considering the mold and rat issues, and he argued that if that finding was not made, that the tenancy effectively ended July 31st and not July 1st. He argued that the Tenant abandoned some large furniture, photos of which were provided, and that this is a factor for the timing of the notice to end the tenancy and the claim for the security deposit.

He stated that the Landlord was not aware of the provisions of the Act that require her to file a claim for a security deposit within 15 days of the end of the tenancy or having received notice of the forwarding address. He stated that there was no effort on either party to do a move-out inspection and that the Landlord was attempting to address any potential claims in her letter of July 31, 2017.

Counsel reviewed the acupuncture receipts and argued that Medical Services Plan covers a portion of each treatment, leaving only \$27.00 payable by the Tenant's fiancé; accordingly, he calculates the amount she paid as \$189.00 for 7 treatments. He argues that there is nothing connecting her symptoms with the mold in the cabin, nor any medical reports submitted which recommended these treatments.

He argued that the Landlord acted on the complaints by: paying for a dehumidifier, ordering two mold inspection reports and hiring pest control to remove the rats. He states that she provided \$150.00 as compensation to the Tenant for the reported rat issue on May 5 and that the remedial work on the cabin to remove mold was completed in August of 2017.

He argued that this is a century old cabin which would not be as air tight as a more modern structure. He states that the Landlord had suggested that the presence of a second occupant and a pet snake may have contributed to the worsening of the mold issue in the cabin. He also suggested that the Tenant thwarted attempts to carry out remedial work by his comment that he wanted to be present if workers were at the cabin to control his dog; the Tenant responded by stating that his dog is friendly, only that he wanted to be present as any pet owner might, to control the dog around strangers.

The Landlord's counsel argues that there is a lack of evidence to prove that the Landlord is in breach of the Act and regulations, and he provided caselaw citations to suggest that there is no action in tort to be applied and that the only remedy is for a breach under the Act, pursuant to sections 7 and 67. He further argued that the Tenant failed to mitigate his losses, as required under the legislation.

Analysis

A party to a tenancy may bring a claim for damages under 67 of the Act, which reads:

67 *Without limiting the general authority in section 62 (3), 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.*

To be successful in a claim for compensation for damage or loss the Applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;

2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; **and**
4. steps taken, if any, to mitigate the damage or loss.

An arbitrator may award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. A normal measure of the damages can be the market value of lost articles, i.e. the price of a similar item in the market.

I have reviewed the reports and photographs and find that the mattress owned by the Tenant was badly damaged from the mold which was in the cabin. There was no evidence as to the age of the mattress, only that it could not be cleaned and used again. I find that the Tenant's claim of **\$448.00** is reasonable and that the Tenant ought to be reimbursed for this expense.

As for the out -of-pocket expenses for the treatments by the Tenant's fiancé, I find that the symptoms described are the most common for the type of molds identified in the mold reports. His description of her symptoms and the health concerns are consistent with that found in people exposed to certain types of mold in a residence. Mold can impact people to varying degrees, and the type of mold identified in the bathroom is considered toxic to humans. The best treatment is to remove oneself from the structure which is moldy. In this instance, the Tenant ended the tenancy and they vacated the premises; he reports that her symptoms improved as would be expected after one removes oneself from ongoing exposure to mold in a home.

I am satisfied that the Tenant has proven, on a balance of probabilities, that the symptoms relate to the presence of mold in the cabin, which grew worse over the course of the tenancy. I further find that the Tenant did what he could to correct the problems and to mitigate the health issues by following the recommendations in the January 2017 report, but that the mold continued to grow as evidenced by the May 2017 report.

I am satisfied that he has proven, again on a balance of probabilities, that his fiancé undertook these treatments to try to alleviate her symptoms due to the exposure to mold. However, I agree with counsel that the amount claimed of \$350.00 is not appropriate; the Tenant is awarded **\$189.00** for the actual out -of-pocket cost of 7 treatments between February and June of 2017.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury, and are measured by

the wronged person's suffering. The damage must be caused by the deliberate or negligent act or omission of the wrongdoer.

The mold report stated that significant remedial work was required in the bathroom, and that there was ongoing water damage and mold present behind baseboards and walls. *Stachybotrys* was the primary mold present, which is a toxic form of mold. Air quality was found to be impacted by the presence of the mold, and occupants warned to "limit your exposure". Section 32 of the Act states that a landlord must provide a residential property in a state of repair that complies with health and safety standards required by law. The reports provided in January and again in May signal a serious deterioration in the structure which I find to be the responsibility of the Landlord.

The bathroom remedial work was listed as a 'high priority'. The mattress had visible fungal staining at the base. The report stated: "Risk of health is present to the occupants and those working in the area." I find that given the condition of the cabin by May of 2017, it was reasonable for the Tenant and his fiancé to vacate the premises as there was nothing more they could do to deal with the mold issue and they were facing a significant health risk by remaining there. I find the Landlord to be in breach of the Act and regulations by failing to provide a rental property or alternate living accommodations that were safe and healthy.

I find that based on the documentary evidence and testimony, that the Tenant has brought sufficient notice of a claim against this Landlord that aggravated damages were being sought. He was entitled to quiet use and enjoyment of the rental unit and the evidence submitted shows that the cabin was in poor condition due to mold issues and rat infestation, to the point where the Tenant suffered a loss and potentially serious health issues. In considering the amount of damages this Tenant is entitled to, I considered the following criteria:

- the amount of disruption suffered by the Tenant;
- the reason for the disruption;
- if there was any benefit to the Tenant for the disruption; and
- whether or not the Landlord made his or her best efforts to minimize any disruptions to the Tenant.

I also took into account the fact that \$150.00 was already paid as compensation to the Tenant at one point for the rat issue. The Tenant was clearly inconvenienced throughout the tenancy in dealing with mold and rodent issues, which he described at length in his testimony and which was not disputed. He also had to limit the use of the space he had rented; his personal belongings were damaged and health concerns arose that prompted the need to relocate. I find that it is reasonable to award the Tenant the sum of **\$2,350.00**, based on the documentary evidence and testimony provided.

The Tenant has also claimed his security deposit of \$575.00, doubled to \$1,150.00. Under section 24 of the Act, a landlord's right to a claim against the security deposit is extinguished if the landlord does not comply with section 23(3) – opportunities for inspection or if the landlord fails to provide a completed condition inspection report. I find that the Landlord has failed to comply with section 23 and that her claim to the security deposit is extinguished. I further find that the Tenant provided his forwarding address as required under section 39 of the Act. Under section 38(6) of the Act, a landlord must pay double the amount of the security deposit to a tenant if the landlord fails to repay the deposit or file a dispute within 15 days of the end of the tenancy or date the landlord receives the forwarding address, whichever is later.

I find that the Tenant has proven his claim for double the security deposit and the Landlord shall pay the sum of **\$1,150.00** to the Tenant. As the Tenant was successful in his claim, I am awarding the filing fee of **\$100.00**.

This monetary order must be served on the Landlord and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court if the Landlord fails to make payment. Copies of this order are attached to the Tenant's copy of this Decision.

Conclusion

The Landlord shall pay forthwith to the Tenant the sum of \$4,237.00.

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: June 13, 2018

Residential Tenancy Branch