Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNDCL-S, MNRL-S, FFL / Tenant: MNDCT, MNSD, FFT

Introduction

On November 6, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") to request a Monetary Order for damages and unpaid rent, to apply the security deposit to the claim, and to be compensated for the cost of the filing fee.

On February 15, 2019, the Tenant submitted an Application for Dispute Resolution under the Act. The Tenant requested a Monetary Order for damages, the return of her security deposit, and to be compensated for the cost of the filing fee. The Landlord's Application was crossed with the Tenant's Application and the matter was set for a participatory hearing via conference call.

On March 4, 2019, both parties attended a participatory hearing. During this hearing, the Landlord withdrew his Application. The hearing proceeded with the Tenant's claim and, as a result of the extensive claim and a lack of hearing time, the hearing was adjourned to a future date.

In my Decision, dated March 4, 2019, I ordered the Landlord to return the Tenant's security deposit and advised the parties that no further evidence would be accepted.

The hearing was reconvened on April 8, 2019.

Preliminary Matters

The Landlord, the Tenant and the Tenant's advocate attended the reconvened hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

The Tenant testified that they had obtained a report from an expert witness about the mold that had damaged their personal property. I confirmed that this report had been obtained after the first hearing and that the report and the findings were not submitted or available during the first hearing. As this reconvened hearing is a continuation of the first hearing and I had advised the parties that no further written evidence would be accepted, I find that the report from the Tenant's expert witness and the witness' testimony would not be accepted or entered in this reconvened hearing.

The Landlord stated, and the Tenant agreed, that the Landlord had returned both the security deposit and the fob deposit to the Tenant, as ordered in the Decision, dated March 4, 2019.

Issues to be Decided

Should the Tenant receive a Monetary Order for damages, in accordance with Section 67 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlord and the Tenant agreed on the following terms of the tenancy:

The one-year, fixed-term tenancy began on January 1, 2018. The Tenant moved out of the rental unit on October 6, 2018 and met with the Landlord on October 8, 2018, to return the keys. The rent was $1,900.00 and was due on the first of each month. The Landlord collected a $950.00 security deposit and has since returned the security deposit to the Tenant, in accordance with the Act and the order in the Decision, dated March 4, 2019.

Tenant's Evidence:

The Tenant testified that on June 13, 2018, the washing machine flooded her rental unit and caused damage to the flooring and drywall in the laundry room, storage room, hallway, living room and kitchen. The Tenant stated that, due to the Landlord failing to respond to the water damage in a timely manner, the rental unit and her belongings became infested with mold and the unit became unlivable due to the unhealthy and toxic atmosphere.

The Tenant stated that she phoned the Landlord on June 13, 2018, as soon as she discovered that the washing machine had flooded the rental unit. The Tenant sent the Landlord three photos to demonstrate that the laminate flooring had been damaged due to the flooding. The Tenant submitted the email with attached photos as evidence.

The Tenant advised that the Landlord attended the rental unit and indicated that he would fix the washing machine and that mold wouldn't be an issue. The Landlord arranged the repair of the washing machine over the next week; however, the Tenant did not hear from the Landlord for over four weeks and no attempts were made to dry out the floor of the rental unit.

On July 16, 2018, the Tenant contacted the Landlord to enquire about the timing of repairs to the laminate flooring. The Tenant stated that moisture had been trapped underneath the flooring, that mold was forming and off-gassing and, as a result, causing a strong smell throughout the rental unit. The Tenant expressed her concerns about the potential health hazards of the mold to the Landlord.

On the same day, the Tenant purchased a digital moisture reader and obtained elevated moisture readings from the flooring of the rental unit. The Tenant submitted photos of the readings as evidence.

The Tenant submitted that from June 13, 2018 to September 15, 2018, the Landlord did nothing to resolve the toxic situation that had resulted from the water damage. The Landlord, through his negligence, allowed the mold to grow and for other toxic substances to be constantly released from the chemical ingredients in the laminate flooring. The Tenant stated that the smell caused her to feel physically ill with headaches and nausea. Throughout August and September 2018, the Tenant had to leave her rental unit with increased frequency to find relief from being in the unit.

The Tenant referred to the Landlord's email, submitted in the Landlord's evidence package, where the Landlord acknowledged the Tenant's situation when he wrote to the Insurance Company on September 12, 2018 and stated that his tenant was feeling sick and getting nauseous due to the water damage to the flooring.

The Tenant stated that the Landlord knew there was mold in the rental unit and referred to an email from the Landlord's Insurance Company, dated September 13, 2018, where the adjuster, in relation to the Tenant feeling sick, asked the Landlord if dryers had been placed in the rental unit at the onset of the claim and stated that this would be the usual process regardless of confirmation of coverage. The adjuster then stated that "mold can begin with in 24 hours of any water damage. The loss occurred on June 6th, we were not made aware of this loss until July 20th, and were not given access until July 31st. Any mold would not be covered under the policy. As a homeowner it is your responsibility to prevent further loss."

The Tenant referred to the Landlord's evidence where, on October 2, 2018, the Insurance Company responded to an email from the Landlord. In this email, the representative from the Unit Specialist Response Centre stated that they had been in contact with the first restoration company (that initially assessed the rental unit in early August of 2018), and confirmed that the floor "was lifting and an odor was emanating from the wet material." The Insurance Company stated that they were willing to consider the Tenant's compromised immune system as it may be considered the unit was unfit for its intended use upon receipt of medical documentation.

The Tenant submitted that she stayed, for the most part, in the rental unit for the month of August as the state of the unit worsened and her health became more compromised. Regardless of paying rent for September 2018, she moved out of

the rental unit and into her parent's home on September 15, 2018, to escape the conditions of the unit. The Tenant stated that she did not bring any of her belongings with her until she fully moved out of the rental unit on October 6, 2018.

The Tenant acknowledged that the Landlord was attempting to compensate her for loss of rent and that the Landlord's Insurance Company may need a doctor's note to review. The Tenant provided a copy of a doctor's note, dated October 15, 2018, that indicated the Tenant's symptoms were nausea, air hunger and respiratory and that she had a specialist's appointment on October 26, 2018. The doctor indicated that the Tenant's medical status was "assessed and endorsed."

The Tenant testified that it wasn't until she moved all of her furniture, clothing and music equipment from the rental unit and into her parent's home, that she discovered that all of her belongings were infused with the smell of mold. The Tenant stated that the smell made her sick and the mold from her belongings began to contaminate her parent's home. The Tenant covered some of her musical instruments in plastic and stored a variety of her belongings on her parent's covered outside deck. The Tenant stated that she ended up incurring disposal costs for the large amount of furniture, clothing and personal items that she had to discard as the cleaning attempts she had made to remove the smell of the mold were ineffective.

The Tenant submitted a monetary worksheet to outline her losses. She stated that her music equipment, which had been tools for her part-time working income, were virtually irreplaceable as many of the pieces were vintage equipment. The Tenant stated that she had to dispose of her bed frame, mattress, night stand, duvet, area rug and her desk as they had been so badly damaged by the smell of the mold.

The Tenant attempted to clean all of her property and testified that even after multiple washings with various cleaners, that she could not get the smell out.

The Tenant submitted copies of receipts for some of her equipment and indicated her research for the replacement of various pieces of new and used musical equipment to substantiate her claim for the value of the loss.

The Tenant submitted that thirty-three pieces of her musical equipment were damaged, the plastic and rubber components infused with the smell from the

mold, to a point that made them unusable for the Tenant. The Tenant stated that she has disposed of most of the equipment but still has four synthesizers wrapped in plastic, an amp, a collection of vintage cameras and her record collection.

The Tenant submitted a list with twenty-eight other items that were damaged including a Canon camera, camera bag, stereo system, desk, bed frame, mattress, night stand, lamp, area rugs, couch, chair cabinets, desk, office chair, luggage, backpack, shoes, coats, clothes and art supplies. The items that the Tenant still has possession of, as noted above, were included in the list. The Tenant stated that much of the music equipment still works; however, that the strong smell of mold makes them unusable.

The Tenant has claimed the amount of $19,786.00 as the amount of loss for the sixty-one items, which does not include the cost of the vintage furniture, as she was unable to ascertain a monetary value.

The Tenant has also requested reimbursement for her rent for the months of July, August and September 2018, in the amount of $5,700.00, as the living conditions were unhealthy and damaged all of her personal property. The Tenant felt she was forced to move out of the rental unit due to the Landlord's lack of response to the flood, the subsequent mitigation of the mold and her deteriorating health.

The Tenant testified that she is still suffering ill effects from the exposure to mold, that she is heart-broken for the loss of her personal effects and has lost income by not being able to perform her music. The Tenant stated that her monetary loss is far more than $30,000.00 and that the strain of the forced move, the loss of her property, health and part-time livelihood has been extremely stressful.

Landlord's Evidence:

The Landlord testified that he responded to the Tenant's report of the leaking washing machine, noted the damage and called an appliance repair company. The Landlord submitted copies of the correspondence between the appliance repair as evidence. The correspondence indicated that an appliance repair contractor attended to the rental unit to assess the issue with the washing machine and reported to the Landlord that the cold-water valve was leaking. It did not appear that the appliance repair company fixed the leaking valve, rather, sent an email to the Landlord on June 19, 2018 with the diagnosis and an estimate.

According to the invoice, the appliance repair company attended to the rental unit on June 25, 2018, to fix the leak and noted that the floor around the washer had been lifting, due to the damage from the water.

The Landlord admitted that he didn't do anything to assist in drying-out the rental unit. He stated that he was "hoping that the hot weather would dry out the unit.". The Landlord filed an insurance claim and expected the contractors to deal with the remediation and repair.

When asked about the timing of the insurance claim, the Landlord stated that he filed the claim on July 23, 2018 and began working with an adjuster. The Landlord acknowledged that the Tenant had been living in the rental unit with the warped and discoloured laminate flooring and damaged drywall in both the laundry room and in the storage room, where the Tenant had some of her personal items stored.

The Landlord stated that on September 12, 2018, he received correspondence from Tenant that she has been feeling ill from being in the rental unit. The Landlord said that he "immediately escalated the concern to insurance adjuster."

The Landlord submitted a copy of an email where he had asked a second Restoration Company, the one that eventually completed the repairs of the rental unit, if they knew what type of mold was present in the rental unit and if it was toxic. The second Restoration Company responded via email on November 13, 2018 and stated that they could not comment on types of mold, as that is not their expertise and that a hygienist is the only qualified person that can identify mold and the different forms. They continued to say that they identified discoloration of the baseboards and some drywall in the laundry room. At the time of the investigation (assessment), the area was metered and found to be dry. Although the project manager, personally, could not smell anything, they did find moisture below the underlayment, between the concrete slab. The Landlord stated that the second Restoration Company would have attended the rental unit for the assessment on September 21, 2018.

The Landlord testified that he did his best to keep the Tenant informed of the process with his insurance company and attempted to get the insurance company to compensate the Tenant for ten days of rent, when she had to move out of the rental unit.

The Landlord stated that the Tenant's doctor did not provide a link to the Tenant's health condition with any mold in the rental unit.

The Landlord stated that there was no third-party verification of the damage to the music equipment and, although admitting to seeing some equipment in the rental unit, questioned if all of the music equipment in the claim had been in the rental unit.

The Landlord questioned if the Tenant had attempted to mitigate her losses.

The Landlord stated that there was no expert assessment of the air quality in the rental unit or whether there was mold present.

Analysis

Section 7(1) of the Act establishes that a party who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the other party for damage or loss that results from that failure to comply.

Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 28 of the Act and *Residential Tenancy Policy Guideline 6* both refer to the Tenant's entitlement to quiet enjoyment. The relevant portion of the Guideline states:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of

> an interference or unreasonable disturbance but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

Section 32 of the Act sets out the responsibility of a Landlord to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of a rental unit, make it suitable for occupation by a Tenant.

I accept the undisputed evidence that a water leak from the washing machine was extensive enough to cause damage to the flooring, baseboards and drywall, in varying degrees, in the laundry room, storage room, hallway, living room and kitchen of the rental unit.

I accept the Landlord's testimony and evidence that he responded to the Tenant's concerns about the washing machine leak and, although the leak wasn't fixed right away, that the Landlord did eventually have an appliance repair company attend to the rental unit to stop the flow of water. I find that the Landlord rightfully took responsibility to fix the leaking washing machine and that any damage, because of the leaking washing machine, would also be the Landlord's responsibility.

I accept the undisputed evidence from both parties that the Landlord failed to take any action to expedite the drying out of the rental unit floors, to fix the buckled flooring, to repair water damaged baseboards or walls, until he started an insurance claim on July 23, 2018. I accept the undisputed evidence that no remediation work occurred in the rental unit while the Tenant occupied the unit through to October 6, 2018.

Neither party submitted conclusive evidence from a qualified assessor that a harmful amount of mold had or had not established itself within the rental unit as a result of the flood and the resulting wet floor boards, underlay, baseboards and drywall. Nor was there expert evidence as to how the mold, and potentially toxic fumes, had or had not damaged the Tenant's property or affected her health.

However, upon review of the Tenant's testimony and evidence, I find, based on a balance of probabilities, that, as a result of the Landlord's negligence to properly address the moisture in the rental unit from the flood, that mold did form and subsequently, negatively impacted the Tenant's health and personal belongings. Furthermore, I find that the Landlord failed to properly repair and maintain the rental unit after the flood, in accordance with Section 32 of the Act.

The Tenant testified that, as a result of the toxic smell and mold, she had to leave her rental unit with increased frequency to find relief from being in the rental unit. I find it reasonable that the rental unit became increasingly uninhabitable as time went on and the Landlord continued to take no action to remedy the moisture, mold or the damaged flooring in the unit. As a result, I find that the Tenant has established a loss of quiet enjoyment of her rental unit and as such, should be compensated for half of July (when she advised the Landlord of the toxic smell) and all of August and September 2018 rent, in the amount of $4,750.00.

The Tenant submitted a monetary worksheet and testified that, due to the mold in the rental unit, she had incurred a loss in excess of $20,000.00 worth of personal property and music equipment. She stated that she had disposed of her furniture, clothing and luggage because of the smell that would not come out, regardless of attempts to clean the items. She submitted photos that showed many pieces of her property and music equipment covered in plastic or in plastic containers that were stored outside of her parent's home.

I do accept that the Tenant incurred substantial losses due to the Landlord's inaction and the subsequent mold in the rental unit; however, I find the Tenant failed to provide sufficient evidence to verify the actual monetary amount of the loss or damage for some of her items. For example, the Tenant still has possession of the four synthesizers, vintage cameras and the record collection, has included these items in her monetary worksheet and did not acknowledge that they may still hold some monetary value, regardless of her opinion that they were unusable due to the smell of mold.

I accept the Tenant's evidence that she threw out her mattress, rugs, furniture, luggage sets, backpacks, shoes, coats and clothing due to the mold and that the smell also negatively affected much of her music equipment. I also find that the Tenant provided evidence to substantiate a loss for intangible items in relation to

potential part-time income, a loss of personal items of sentimental value and the hardship she incurred due to having to move from her rental unit; all attributable to the Landlord's negligence.

When I consider the circumstances as a whole, I find that the Landlord was aware of the flood, the resulting damage and the likelihood that mold was forming and potentially causing a health hazard and property damage. I find that, regardless of the Landlord being aware of how this situation was causing an interference with the Tenant's ability to enjoy and inhabit her rental unit, he failed to respond and to take reasonable steps to correct the issues.

The Landlord voiced his concern that the Tenant failed to mitigate her losses; however, I find that the Tenant provided ample evidence that she attempted to communicate with the Landlord about the moisture in the rental unit, the damaged flooring and her worsening health. The Tenant also testified that she made an effort to clean many pieces of her property with negative results.

Upon review of the evidence presented, I find that the Tenant has established a loss, in accordance with Section 67 of the Act. Rather than attempting to identify each item claimed as a loss by the Tenant, I am awarding a bulk amount to assist with the compensation for the Tenant in response to the many challenges she has faced as a result of the Landlord's negligence. I award the Tenant the sum of $10,000.00 in compensation for incurred damages, in accordance with Section 67 of the Act.

The Tenant's application has merit and I find that she should be compensated for the cost of the filing fee, in the amount of $100.00.

The Tenant has established a monetary claim in the amount of $14,850.00, which includes $4,750.00 for a return of rent, $10,000.00 in damages and the $100.00 in compensation for the filing fee for this Application for Dispute Resolution. Based on these determinations, I grant the Tenant a Monetary Order for $14,850.00, in accordance with Section 67 of the Act.

Conclusion

I grant the Tenant a Monetary Order for the amount of $14,850.00, in accordance with Section 67 of the Act. In the event that the Landlord does not comply with

this Order, it may be served on the Landlord, 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 *Residential Tenancy Act*.

Dated: April 15, 2019

Residential Tenancy Branch