



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on May 2, 2019. The Tenant applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- a monetary order for return of the security or pet deposit.

Both sides were present at the hearing. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Tenant sent her Notice of Hearing and evidence to each of the Landlords on January 8, 2019, by registered mail. The Tenant provided proof of service and tracking information. The Landlords deny getting this package. However, I find, for the purposes of this Act, the Tenant has sufficiently served the Landlord with her application and evidence. Pursuant to section 88 and 90 of the Act, I deem the Landlord received this package 5 days after it was mailed, on January 13, 2019.

The Landlord stated he did not provide any evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Tenant has applied to have the security deposit returned to her. When asked how she provided her forwarding address to the Landlord, in writing, she stated she dropped it in the mailbox on December 5, 2018. However, the Landlord denied ever getting this. The Tenant provided no corroborating evidence or further proof of service in her evidence.

During the hearing, I confirmed the Tenant's address, and confirmed that the Landlord now had it. I find the Landlord is served with the forwarding address of the Tenant, as of the date of this decision.

The Landlord must deal with the deposit pursuant to section 38 of the *Act*. The Tenant's application for return of the security deposit is premature, and is dismissed with leave to reapply. The Tenant may re-apply if the Landlord does not claim against or return the deposit in full within 15 days of this decision date.

Issue(s) to be Decided

1. Is the Tenant entitled to compensation for loss or money owed?

Background and Evidence

Both parties agree that the tenancy started around June of 2014, and at that rent in the amount of \$650.00 was due on the first of the month. Rent went up to \$800.00 as of April 1, 2016, and stayed at that rate until the end of the tenancy, which was November 15, 2018. The Landlord still holds the Tenant's security deposit in the amount of \$250.00.

At the hearing, the Tenant stated she was seeking \$3,000.00 in compensation due to all the of the issues she had throughout her tenancy. The Tenant stated she had to guess at the amount that was reasonable and did not provide any itemization or rationale as to how she arrived at this amount, despite being asked. On her application, the Tenant stated that:

"Landlord failed to repair leaking into my kids bdrm from outside, causing numerous floods, causing mold and serious medical issues for us. I have mold report, doctors reports and receipts of medications."

During the hearing, the Tenant also mentioned a few other items which bothered her about the tenancy. The Tenant claims the Landlord's father was in her rental unit on a "daily basis". The Tenant also stated that the Landlord was withholding her mail, and not giving it to her in a timely manner, or at all. The Tenant provided a copy of an email/text message she sent to the Landlord indicating her concerns with unlawful entry, laundry issues, internet issues, and mail issues. The Landlords deny doing any of this and stated the Tenant is fabricating lies about them.

The Tenant's main focus in the hearing was on the mold, the mold report she obtained, and impact it had on her and her children. The Tenant stated that she became aware that mold could be a problem that was affecting her family after she spoke with a friend, who is a lab technician, who tests for mold. The Tenant stated that shortly thereafter, in September of 2018, she had an environmental testing company come over and do an official sample/report on the rental unit. A copy of this report was provided into evidence. I note several air samples were taken showing elevated amounts of *Stachybotrys Chartarum* (black mold) and this was noted to not be present in the baseline air sample, taken outside. The technician also took photos of a couple of problem areas, where mold was visible in the walls. The report concludes the following:

Conclusions

The indoor air sample collected from the basement suite is considered elevated. *Stachybotrys chartarum* was detected in the indoor air sample and not in the outdoor baseline sample. This group of mold is considered toxigenic and should not be found at any level in a normal indoor environment. The *Penicillium/Aspergillus* like species was detected at concentrations over 2 times greater than the outdoor baseline sample. This group of mold is present at some level in almost all indoor and outdoor samples but is considered elevated. All other mold groups detected in the indoor sample are at similar or lower concentrations than in the outdoor sample. The molds that were found elevated are commonly associated with water damaged building materials.

The basement suite bedroom has visible mold growth on the drywall and carpet. There is likely further mold growth behind the drywall. The kitchen ceiling in the basement suite has water damaged drywall which may have mold growth behind.

Health Canada considers that mold growth in residential buildings may pose a health hazard. Health Canada recommends to clean thoroughly any visible or concealed mold growing in residential buildings. The basement suite requires professional mold remediation following WorkSafeBC "medium" area guidelines for mold removal.

The Tenant explained that her child's bedroom was most affected, and is the subject of the photo showing black mold on the wall in the closet (shown in the report). The Tenant

stated that the carpet and walls were both moldy, and it kept getting worse after each flood that happened. The Tenant stated that there were around 4 floods that happened over the course of 2017 and 2018 (January and May of 2018, and April and December of 2017).

The Tenant provided a copy of the request for repairs she gave to the Landlord in July of 2018. The Tenant requested that the flood damage (carpet, walls, etc) be fixed before the end of August 2018. In that request, the Tenant referred to previous flooding, and its impact on the livability of the second bedroom because this is mainly where the water backed up. The Tenant also explained that since January of 2018, her daughter was unable to sleep in the bedroom (where the mold was) and as a result, both children had to share a bedroom with her. The Tenant stated that she lost the use of the bedroom for this time.

The Tenant also provided a copy of a Housing application form, part of which was filled out by a doctor. The Tenant indicated in this application that she has been dealing with black mold which may have contributed to recurrent infections and worsening ADHD. The doctor recommended that the Tenant seek a different rental unit with a cleaner environment.

The Landlords flatly denied that any flood had occurred, or that there was any issue with mold. The Landlords stated that there have never been any flooding or plumbing issues and the plumber said there was no issue with the drains or the plumbing. The Tenant stated the plumber clearly told her there was a problem with exterior drainage, and the Landlords refused to fix it because of the cost. The Landlords stated that the Tenant has made this whole issue up to get money from them.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,

4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

An arbitrator may award monetary compensation only as permitted by the Act or the common law. In situations where there has been damage or loss with respect to property, money or services, the value of the damage or loss is established by the evidence provided.

First, I turn to a few of the issues the Tenant raised at the hearing, which were not on her application for dispute resolution or on the Notice of Hearing. The Tenant briefly spoke to her concerns with unlawful entry, laundry issues, internet issues, and mail issues. The Landlords deny doing any of this and stated the Tenant is fabricating lies about them.

Although the Tenant appears to be unhappy with several items, I note the Tenant only identified one issue on her application for monetary compensation, which was the flooding/mold issue. As such, this is the only issue I will address. The Tenant did not sufficiently identify any of the other issues on her application, nor did she file an amendment to incorporate additional items such that it would be procedurally fair to hear those matters today.

With respect to these mold issue, I find the following:

I note the Tenant stated there were ongoing moisture issues, including dirty, soiled carpet and walls, due to repeated water ingress. The Tenant eventually discovered this soiled dirty area was mold (as per the report provided into evidence). The Tenant stated she brought up the flooding issue with the Landlords, and asked for the carpets to be replaced and for the affected area to be cleaned up several times, but they repeatedly refused to do anything. The Tenant stated that she spoke with the plumber, who attended and he advised that the drains needed fixing. In contrast to this, the Landlord flatly denies that any flooding occurred, and says the plumber never identified or

informed him of any issue. The Landlord stated that there have never been any plumbing issues or mold issues.

When weighing these two versions of events, I find the Tenant has provided a more compelling and detailed explanation as to what happened. I also have considered that the Tenant's testimony, written request for repairs to the flooded area, and the environmental assessment report are consistent and provide a reliable indication that moisture, mold and water were an issue in the rental unit. I also note the Landlords provided no corroborating evidence. I find it more likely than not that the rental unit had ongoing moisture issues, particularly in the closet of the bedroom where the photos were taken. There is also evidence in the report of moisture issues in the kitchen.

I do not find the Landlord's version of events to be compelling or credible. I note the following portion of the Act:

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.

I find the evidence shows that the rental unit was moderately impacted with mold. I note the environment assessment opines that the rental unit requires professional mold remediation, and is a "medium" risk. Although this report was not completed until the end of the tenancy, I find it more likely than not that the Tenant informed the Landlord of this on at least one other occasion both verbally and in writing, and it does not appear any efforts were taken by the Landlord to remedy the situation. The report corroborates the Tenant's statements that the bedroom was affected by mold for many months, and was uninhabitable. I find the Landlord has failed to provide and maintain the rental unit that complies with health, safety, and housing standards. I find the Landlord breached section 32 of the Act. I note the Tenant lost the use of one of the bedrooms. Her written evidence suggests that her daughter stopped sleeping in that room as of January 2018. I note the tenancy did not end until November 15, 2018.

The Tenant and her daughters had to sleep in one bedroom, in order to avoid mold exposure. I find the Tenant is entitled to compensation for her loss of use of the bedroom from January 2018 until November 15, 2018 (10.5 months). I award the Tenant compensation in the amount of \$160.00 per month for (approximately 20% of monthly rent) for the period of January 2018 until November 2018 (10.5 months). I find the Tenant is entitled to a monetary order in the amount of \$1,680.00.

Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$1,680.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: May 3, 2019

Residential Tenancy Branch