Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1070738 AND BREATER REALTY CARE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNSD, MNDCT, MNRT, FFT

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants, in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, to recover the cost of emergency repairs, for the return of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on June 20, 2019 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Landlord acknowledged receiving these documents, although he contends they were received by regular mail.

On June 12, 2019 the Tenants submitted evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was mailed to the Landlord on August 22, 2019. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On September 16, 2019 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to one of the Tenants on September 16, 2019. The Tenants acknowledged receipt of 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. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Issue(s) to be Decided:

Are the Tenants entitled to the return of security deposit?
Are the Tenants entitled to compensation as a result of a leak and/or mold?
Are the Tenants entitled to recover the cost of emergency repairs?

Background and Evidence:

The Landlord and the Tenants agree that the tenancy began on March 01, 2018 and that rent was $2,350.00 per month.

The Tenants contend that the rental unit was vacated on November 01, 2018 and the Landlord contends it was vacated on November 08, 2018.

The Landlord and the Tenants agree that a security deposit of $1,175.00 was paid. The Tenants are seeking the return of their security deposit.

The Agent for the Landlord stated that the Tenants were given a cheque, in the amount of $1,250.00 on October 30, 2018. He stated that this cheque represented the return of $1,175.00 security deposit plus an extra $75.00 that the Tenants needed to pay the new security deposit. He stated that the Landlord provided them with the additional $75.00 as a form of compensation for the inconvenience of a leak in the rental unit.

The female Tenant stated that the Tenants were given a cheque, in the amount of $1,250.00, on October 30, 2018. She stated that this cheque was given to the Tenants, in its entirety, as compensation for the inconvenience of a leak in the rental unit.

The Landlord and the Tenants agree that the cheque that was provided to the Tenants on October 30, 2018 had a notation on it that declared that it was for the return of the damage deposit.

The Landlord and the Tenants agree that water leaked into the rental unit as a result of a roof leak and that the leak was reported to the Landlord on September 15, 2018.

The male Tenant stated that water leaked into the kitchen, a bedroom, and the bathroom. He said the entire bathroom floor was covered with water and approximately one bucket of water leaked through the kitchen ceiling. He stated that the leak was

initially thought to be the result of a plumbing problem but when the leak occurred again the next day it was determined to be a problem with the roof.

The female Tenant stated that:

- the roof was repaired, although she is uncertain of the date of repair;
- sometime in early October the Landlord sent someone to repair the ceiling;
- the Tenants would not allow this person to repair the ceiling as they were concerned the person was not qualified to remediate the mold they had observed near the repair site;
- prior to the leak being discovered her children began experiencing respiratory issues;
- one of the Tenants' children was hospitalized for three days which they believe was related to the environment in the rental unit;
- the physician treating her child told her that there were no tests to determine if the child's condition was the result of exposure to mould, but he recommended she get the unit tested for mould;
- the Landlord paid for hotel accommodations for the Tenants between October 25, 2018 and October 31, 2018; and
- the Tenants could end the tenancy without one full month's notice.

The male Tenant stated that on October 20, 2018 a superficial repair of the ceiling was completed, although no material was removed from the ceiling during the repair.

The Agent for the Landlord stated that:

- on September 16, 2019 a plumber was sent to the rental unit;
- the plumber determined that the leak was not the result of a plumbing issue;
- the roof was repaired on September 20, 2019;
- the Landlord waited to repair the ceiling as the area impacted needed to dry before it could be repaired;
- sometime during the first week of October of 2018 the Landlord sent a person to repair the ceiling in the bathroom and kitchen that was damaged during the leak;
- the Tenants would not allow this person to complete repairs;
- on October 18, 2018 the Landlord hired a different person to repair the ceiling;
- the Tenants would not allow this second person to complete repairs;
- the Landlord completed a "quick fix" of the ceiling on October 20, 2018, during which time no drywall was removed;
- the Landlord fully repaired the ceiling after the rental unit had been vacated;

- the Tenants informed the Landlord that their child was sick and they considered the home unfit for habitation;
- on October 24, 2018 the Tenants provided the Landlord with a copy of an inspection report that indicated there was elevated levels of mould in the unit;
- as the Landlord was concerned about the information in the inspection report provided by the Tenants, the Landlord paid for hotel accommodations for the Tenants between October 25, 2018 and October 31, 2018;
- the Landlord had the unit inspected for mould and asbestos on October 30, 2018, neither of which indicated the home was uninhabitable;
- there is no evidence that the Tenants' child's health condition is related to the rental unit;
- the Tenants were allowed to end the tenancy without one full month's notice; and
- now that the Landlord's inspection shows that the home was habitable, the Landlord feels that no further compensation is due to the Tenants.

The Landlord and the Tenants agree that the parties attempted to settle this dispute prior to these proceedings; however they were unable to agree on the terms of a settlement agreement.

The Tenants are seeking a rent refund of $3,525.00 in compensation for living in a rental unit they consider to be uninhabitable due to mould This reflects a rent refund from September 15, 2018 to October 30, 2018. The Tenant stated that she was limited her use of the affected rooms during this period because she was concerned about the health of her family and she was concerned that the "ceiling would fall in".

The Tenant is also seeking $1,175.00 for moving costs. The female Tenant stated that the rental unit was vacated with short notice, with the consent of the Landlord, because the Landlord would not agree to properly remediate the areas impacted by mould. The Tenants did not submit copy of any moving expenses. The Tenants submitted a document from the male Tenant's employer, which declares that he missed 46 hours of work between October 20, 2018 and November 05, 2018, for which he lost $1,058.00 in wages. The female Tenant stated that the male Tenant was unable to work these hours due to the need to move with short notice.

The Tenants submitted a report from an individual that appears to be qualified to conduct mould inspections. The report declares, in part, that:

- the unit was inspected on October 24, 2018;

- the inspector examined photographs that were taken by the Tenant prior to the affected areas being “repaired”;
- there was visible fungal contamination in the photographs of the bathroom, kitchen and one bedroom;
- these areas have recently been plastered;
- covering visible mould on drywall is not an acceptable means of remediation;
- areas in the bathroom, kitchen, and bedroom where fungal growth is visible should be professionally remediated;
- repairing these areas without proper precautions could result in cross contamination in the home;
- there is a potential for hidden mould contamination in the kitchen ceiling, the bathroom ceiling and tiled bathroom wall, because of trapped water in the ceilings and high moisture readings behind the tiled wall;
- contaminated drywall must be removed;
- surface sampling detected toxigenic mould on a bedroom wall, where visible fungal growth was observed;
- proper remediation methods are recommended;
- the mould contamination within the home poses a potential health hazard to the occupants of the home, especially children; and
- children who are ill and suffer from respiratory issues should not “under any circumstances” be living in as area where mould contamination exists or where there is a high potential for mould contamination taking place.

The Landlord submitted a report from an individual that appears to be qualified to conduct mould inspections. The report declares, in part, that:

- the unit was inspected on October 30, 2018; and
- air samples within the home show that the air samples taken from the first and second floor are “considered normal” and that the air sample from the basement is “slightly elevated”.

The Tenants are seeking to recover the cost of emergency repairs, in the amount of $393.75. The female Tenant stated that this is an application to recover the money paid to have the rental unit inspected for mould.

The Agent for the Landlord stated that Landlord agreed to compensate the Tenants for the cost of the Tenants’ mould report after it was presented to the Landlord, although paying for the report was not discussed prior to the report being obtained by the

Tenants. He stated that the Landlord is no longer willing to pay for the report because it is refuted by the Landlord's mold report.

Analysis:

On the basis of the $1,250.00 cheque that was submitted in evidence, dated October 30, 2018, I find that the Tenants' security deposit has been returned, in full. Although the Tenants clearly believe that this cheque was some form of compensation for the inconvenience of a leak in the rental unit, I find that the notation on the cheque that declared that it was for the return of the damage deposit makes it clear that the Landlord considered the cheque to be a security deposit refund. I therefore find that the security deposit has been refunded and I dismiss the Tenants' application for the return of the security deposit.

On the basis of the undisputed evidence I find that on September 15, 2018 the Tenants reported a leak; that water damaged the ceiling in the kitchen and bathroom; and that it was subsequently determined that there was a leak in the roof.

In order to determine whether the Tenants are entitled to compensation for living in an uninhabitable rental unit, I must first determine if the rental unit was uninhabitable. There is a general legal principle that places the burden of proving a claim on the party that is claiming compensation for damages. In these circumstances the burden of proving that the rental unit was uninhabitable rests with the Tenants.

On the basis of the report submitted in evidence by the Landlord, I find that when the air quality of the rental unit was tested by this examiner on October 30, 2018 the samples in the upper portions of the home were normal and that the samples in the lower portion of the home were slightly elevated.

On the basis of the report submitted in evidence by the Tenants, I find that when a surface in one of the bedrooms was tested on October 24, 2018, toxigenic mould was detected.

I find it entirely possible that both reports are accurate. As the Landlord's report does not mention surface sampling, I find that it does not dispute the Tenant's report that indicates that toxigenic mould was found on a surface in the bedroom on October 24, 2018. As the Tenants' report does not mention air sampling, I find it does not dispute the Landlords' report that indicates there is no evidence of mould in the air in the rental unit when it was inspected on October 30, 2018.

After considering both reports I find that there is insufficient evidence to conclude that the rental unit was not safe to inhabit between September 15, 2018 and October 30, 2018. In reaching this conclusion I was influenced, to some degree, by the report submitted in evidence by the Landlord. Had the mould in the rental unit been significant enough to render the unit uninhabitable, I find it reasonable to conclude that this would have been detected in the air samples taken on October 30, 2018.

In determining that there was insufficient evidence to conclude that the rental unit was not safe to inhabit between September 15, 2018 and October 30, 2018, I was also influenced by the absence of a definitive statement, in the Tenants' report, that mould is hidden in the ceiling or wall. Rather, the report indicates that there is a potential for hidden mould contamination in the kitchen ceiling, the bathroom ceiling and tiled bathroom wall.

In determining that there was insufficient evidence to conclude that the rental unit was not safe to inhabit between September 15, 2018 and October 30, 2018, I was also influenced by the absence of a definitive statement, in the Tenants' report, that the mould contamination detected in the rental unit is hazardous. Rather, the report indicates that the mould contamination within the home poses a potential health hazard to the occupants of the home, especially children.

In determining that there was insufficient evidence to conclude that the rental unit was not safe to inhabit between September 15, 2018 and October 30, 2018, I was further influenced by the absence of a definitive statement, in the Tenants' report, that it was unsafe for children to live in this particular rental unit, given the amount of mould detected during the inspection. Rather, the report declares that children who are ill and suffer from respiratory issues should not "under any circumstances" be living in as area where mould contamination exists or where there is a high potential for mould contamination.

In determining that there was insufficient evidence to conclude that the rental unit was not safe to inhabit between September 15, 2018 and October 30, 2018, I was further influenced by the timing of the report submitted by the Tenant. While I accept that some mould was present when the unit was inspected on October 24, 2019, there is no evidence to establish when the mould growth began. I find it entirely possible that the mould did not grow until weeks after the leak was discovered on September 15, 2018.

In determining that there was insufficient evidence to conclude that the rental unit was not safe to inhabit between September 15, 2018 and October 30, 2018, I have placed no weight on the female Tenant's testimony regarding the health of her children. I have placed no weight on this testimony as there is no medical evidence that establishes their health conditions were directly or indirectly impacted by the condition of the rental unit.

Regardless of whether this rental unit was safe to inhabit between September 15, 2018 and October 30, 2018, the fact remains that the Tenants did inhabit the rental unit between September 15, 2018 until they were put up in a hotel on October 25, 2018, at the expense of the Landlord. As the Tenants inhabited the rental unit for this period I can find no reason to conclude that they are entitled to a full rent refund for the period between September 15, 2018 and October 25, 2018. As the Tenants were relocated on October 25, 2018, at the expense of the Landlord, I can find no reason to conclude that they are entitled to a rent refund for any period after October 25, 2018.

In adjudicating the claim for a rent refund, I have considered the issue of quiet enjoyment of the rental unit.

Section 28 of the *Residential Tenancy Act (Act)* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 16, with which I concur, reads, in part:

> 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.

While I accept that there was some inconvenience to living in the rental unit because of the leak and the subsequent repairs that were made prior to October 30, 2018, I find this was a temporary and relatively minor inconvenience for which the Tenants are not entitled to compensation.

In determining the leak/repairs were a relatively minor inconvenience I was influenced, in part, by my conclusion that the Tenants' fear that the ceiling might collapse is not reasonable, given the amount of damage depicted by the photographs.

In determining the leak/repairs were a relatively minor inconvenience I was influenced, in part, by the evidence that establishes there was not an excessive amount of work involved with cleaning the water or repairing the subsequent damage.

As has been previously stated, I find there is insufficient evidence to establish that the rental unit was impacting the health of the Tenants or their family. I therefore did not consider this submission when considering the issue of loss of quiet enjoyment.

I do accept that the Tenants were inconvenienced when they moved their family to a hotel on October 25, 2018. As the Tenants requested the move, however, and the Landlord paid for the cost of the hotel, I find that the Tenants are not entitled to compensation for this inconvenience.

I dismiss the Tenants' application for a rent refund of any sort.

Section 32 of the *Residential Tenancy Act (Act*) requires landlords to provide and maintain residential property 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 the rental unit, makes it suitable for occupation by a tenant. I find that section 32 requires landlords to repair areas damaged by water in a manner that complies with industry standards whenever there is a suspicion that the area may be contaminated by mould.

As there is no evidence that the person completing the Landlord's mould report viewed photographs of the contaminated walls prior to the walls being repaired or that they viewed the walls after they were repaired on October 20, 2018, I find that I must rely

solely on the Tenants' mould report regarding the need to remediate the rental unit after the leak.

On the basis of the Tenants' mould report, I find that the areas contaminated by water and mould in the rental unit were not properly remediated; that some visible mould was still present on October 24, 2018; and that the contaminated drywall needed to be removed. In these circumstances I find that the Landlord was obligated to repair the rental unit in a manner that complied with the recommendations outlined in the mould report submitted by the Tenants. On the basis of the undisputed evidence that no drywall was removed from the areas impacted by the leak, I find that the Landlord did not comply with the remediation methods recommended in the Tenants' mould report.

On the basis of the undisputed evidence I find that it was reasonable for the Tenants to conclude that the Landlord did not intend to repair the rental unit in the manner recommended in the mould report submitted by the Tenant. As it was reasonable for them to conclude that the rental unit would not be properly remediated, I find it was reasonable for them to conclude that they should vacate the rental unit. On the basis of the information provided to them in the mould report of October 24, 2018, I find it was reasonable for them to determine that the rental unit should be vacated as soon as possible.

I find that it was not reasonable to expect the mould report the Landlord submitted in evidence would influence their decision to leave, given that the move was almost complete by the time the Landlord's report showed that the air quality in the rental unit did not pose a significant health hazard.

As the need to move in an urgent manner can be directly attributed to the Landlord's failure to mediate the rental unit in a manner that complies with the recommendations made in the Tenants' mould report, I find that the Tenants are entitled to recover costs associated to the need to move in an urgent manner.

On the basis of the testimony of the Tenants and the information provided by the male Tenant's employer, I find that the male Tenant lost $828.00 in wages for the period between October 20, 2018 and October 30, 2018. As these lost wages are related to the need to move in an urgent manner, I find that the Tenants are entitled to compensation of $828.00 for moving.

I dismiss the Tenants' claim for compensation for lost wages of $230.00 from November 05, 2018, as the female Tenant testified that the rental unit was vacated on November 01, 2018. As the rental unit was vacated prior to November 05, 2018, I am unable to conclude that those lost wages are sufficiently related to an urgent need to move.

Section 33(5) of the *Act* requires a landlord to reimburse a tenant for amounts paid for emergency repairs in certain circumstances.

Section 33(1) of the *Act* defines emergency repairs as repairs that are:
(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

(c) made for the purpose of repairing

(i) major leaks in pipes or the roof,

(ii) damaged or blocked water or sewer pipes or plumbing fixtures,

(iii) the primary heating system,

(iv) damaged or defective locks that give access to a rental unit,

(v) the electrical systems, or

(vi) in prescribed circumstances, a rental unit or residential property.

I find that having a mould inspection of a rental unit does not meet the definition of an emergency repair. As the mould inspection cannot be considered an emergency repair, I dismiss the Tenants' application to recover the cost of the inspection.

I find that the Tenants' Application for Dispute Resolution has merit and that the Tenants are entitled to recover the fee paid to file this Application.

Conclusion:

The Tenants have established a monetary claim of $928.00, which includes $828.00 for moving costs and $100.00 as compensation for the cost of filing this Application for Dispute Resolution. I grant the Tenants a monetary Order for $928.00.

In the event the Landlord does not voluntarily comply with this Order, it may be 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: September 30, 2019

Residential Tenancy Branch