



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: MNDCT, MNSD, FFT
For the landlord: MNDLS, MNDCLS, FFL

Introduction

This hearing was convened as a result of an Application for Dispute Resolution (“application”) by both parties seeking remedy under the *Residential Tenancy Act* (“Act”). The landlord applied for a monetary order in the amount of \$28,013.93 for damage to the unit, site or property, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the cost of the filing fee. The tenants applied for a monetary order in the amount of \$6,271.27 for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for the return of double the security deposit, and to recover the cost of the filing fee.

On July 8, 2019, the hearing began and after 52 minutes the hearing was adjourned. An Interim Decision was issued dated July 8, 2019, which should be read in conjunction with this decision. On September 5, 2019, the hearing reconvened and after an additional 118 minutes of testimony the hearing concluded. Attending both portions of the hearing were the tenants, a translator for the tenants SK, and the landlord agent RL (“agent”). Attending only one portion of the hearing was summer student RS, counsel MM, legal advocate NT, the landlord QX, and witness SK.

At the outset of the hearing, the hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

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 these matters are described in this decision.

Neither party raised any concerns regarding the service of documentary evidence. I consider the parties to have been sufficiently served in accordance with the *Act* as a result.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties also confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is either party entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?
- Is either party entitled to the return of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on April 2, 2018 and was scheduled to revert to a month to month tenancy after April 30, 2019. Monthly rent in the amount of \$2,000.00 was due on the first day of each month. The tenants vacated the rental unit on March 9, 2019.

Evidence related to Landlord's claim

The landlord's claim of \$28,013.93 is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Damage repair – restoration bill 1	\$13,354.38
2. Damage repair – restoration bill 2	\$12,659.55
3. Loss of rent – March 2019	\$2,000.00
TOTAL	\$28,013.93

Regarding items 1 and 2, the landlord is claiming for two restoration invoices which total \$26,013.93. The agent referred to a Circle Investigation Report which contained photos of two plants in the rental unit. The agent claims that these plants along with the tenants not using ventilation properly in the rental unit, cause extreme moisture leading to mould throughout the rental unit. The agent stated that at the start of the tenancy in April 2018, the rental unit was about five years old. The agent stated that all of the moisture was near the windows and that the tenants were the cause of the improper ventilation.

In one report referred to by the agent it states that the oven stove fan was not in working condition and in another report, there is contradictory information that states all appliances were working properly. The agent attempted to explain the contradictory information by alleging that the tenants must have switched off the stove hood fan circuit breaker; however, the agent admitted that he did not have any evidence to prove this allegation.

The agent admitted that when the tenants notified the landlord on December 18, 2018 of their concerns regarding mould in the rental unit that the landlord did not think it was a serious problem so did not contact a restoration company. The parties confirmed that the tenants again notified the landlord of the ongoing mould on January 8, 2019. The agent was unable to confirm if the landlord had insurance and if the landlord did have insurance, if an insurance claim was made. The tenants confirmed that they did not have tenant insurance.

The legal advocate for the tenants stated that the reports submitted contained several irregularities including one report stating that the stove hood fan was not working and then in the second report, stated that all appliances were working. Furthermore, the legal advocate stated that in one report the contractor states that there was improper lack of ventilation, then again amended that portion to indicate that the seals and windows were the problem, then the contractor blames the tenants for their plants as the cause of the moisture.

The agent confirmed that at the start of the tenancy, the automatic ventilation timer ("timer") switch was turned off and stated that there was no requirement for that timer to be turned on, which the legal advocate disagreed with. The legal advocate presented the results of the tenants' mould assessment report from ABM which indicates that the ventilation timer must be left in the on position and referred to Article 9.32.3 of the BC Building Code, which the legal advocate stated requires that the timer must be left in the on position to properly circulate air. The legal advocate also stated that the tenants

opened windows during the tenancy to assist with air circulation which is evident on page 3 of 4 of the Circle report where the window is shown in an open position.

The tenants vehemently deny that they are responsible for the water ingress into the rental unit and speculated that the cause would either be faulty seals or windows as indicated in one of the reports and due to the landlord shutting off the timer at the start of the tenancy. There was no evidence presented that the landlord provided instructions to the tenants on how to operate the timer.

The agent stated that the tenants did not do the minimum amount to care for the rental unit and cause the mould damage. The reports from the landlord and the report from the tenants do not come to the same conclusion as to the cause of the mould and water ingress into the rental unit. In fact, a CJB claim report dated January 29, 2019 states in the claim details the following:

Fail/ineffective seal at exterior doors, windows, and glass wall. Caused an extraordinary amount of condensation to collect indoor and allow rain water to leak in. Affected rooms include living room, bedroom, master bedroom, and the walk in closet. Water damage and fungus growth found in ceiling, dry wall, windowsill, trim work, baseboard and surrounding flooring.

Only until a later report was issued, does CJB claim that the ventilation system in the unit appears functional and then attributes the cause to the tenants "improper/lack of use of ventilation by residents." The tenants' report from ABM dated March 7, 2019, states the following:

The condo unit has a bathroom fan with a timer which is supposed to automatically cycle the fan for two 4 hour durations during each day (8 hours every 24 hour period). This timer and the fan in the main bathroom provides the necessary ventilation in the unit to reduce humidity in the entire unit and maintain it below 55%. This fan and timer is installed as required by the BC building code and must be kept set in automatic for it to function. The timer controller is located on the wall in the closet next to the main bathroom. At the time of assessment this timer was set to off which disables the timer and prevents the fan from coming on automatically as is required 8 hours daily. At the time of the assessment the tenant was asked if she knew the time was turned off. The states she was not aware of the timer nor that it was turned off. The timer is not labeled

and has not instructions on it. The tenants stated she had not touched the timer at all...

...The condensation and mold growth in this unit is a result of the bathroom fan automatic timer being turned off and left disabled when the tenant first moved into the unit. Had the timer been set to automatic at the start of the tenancy and/or this mold issue been properly investigated in December when it was first reported the condensation and mold growth could have been either entirely prevented or been substantially less...

Regarding item 3, the landlord has claimed \$2,000.00 for loss of March 2019 rent. The tenants stated that they had a mutual agreement with the landlord to vacate the rental unit in March 2019 and if they did, that they would not be responsible for the March 2019 rent. The agent stated that the landlord had agreed to waive March 2019 rent; however, has now decided to claim for loss of March 2019 rent.

Submitted in evidence was a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental unit dated February 26, 2019 ("4 Month Notice"). The 4 Month Notice has an effective vacancy date of April 30, 2019. The tenants did not dispute the 4 Month Notice.

Tenants' claim

The tenants are claiming \$6,271.27, which is comprised as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. ABM report	\$420.00
2. Move out fee	\$150.00
3. Equipment contract – U-Haul	\$82.27
4. New Desk receipt	\$139.00
5. Double security deposit	\$2,000.00
6. One month rent – 4 Month Notice	\$2,000.00
7. Loss of use of apartment space	\$1,000.00
8. Damaged TV table	\$80.00
9. Damaged Bed frame	\$100.00
10. Damaged Mattress	\$300.00
TOTAL	\$6,271.27

Regarding item 1, the tenants are claiming for the cost of the \$420.00 ABM report. The tenants contacted ABM and arranged for their services. There is no evidence before me that the landlord agreed to compensate the tenants for the cost of this report. The tenants submitted a receipt in evidence in the amount of \$420.00. The agent stated that the tenants should be responsible for this cost as they hired ABM and not the landlord.

Regarding item 2, the tenants are claiming \$150.00 for the cost of a move-out fee, which was dismissed during the hearing as the tenancy agreement indicates that the tenants are responsible for the move out costs as part of the tenancy agreement.

Regarding item 3, the tenants are claiming \$82.27 for a U-Haul related to moving as they feel they had to move out of the rental unit due to the mould problem and the rental unit being uninhabitable. This item was dismissed during the hearing as the tenants did not dispute the 4 Month Notice and the parties mutually agreed that the last month of rent would be waived if they vacated the rental unit in March 2019.

Regarding item 4, the tenants are claiming \$139.00 for a new desk due to mould damage. The tenants provided a receipt in evidence and referred to two colour photos showing mould on the desk. The tenants confirmed that they did not have contents insurance. The agent stated that with minimum effort, the desk could have been cleaned and not damaged by mould and that the damage is a result of the tenants' lack of proper cleaning.

Regarding item 5, the tenants are claiming \$2,000.00 for double the amount of the security deposit. The agent stated that the landlord continues to hold the tenants' \$1,000.00 security deposit. The outgoing Condition Inspection Report ("CIR") is dated March 9, 2019 and the landlord filed their claim on March 21, 2019, claiming towards the tenants' security deposit as part of their application. The tenant's translator raised the issue of section 36 of the *Act* in that they did not receive a copy of the outgoing CIR until after the 15 day deadline. The agent stated that a copy of the outgoing CIR was mailed to the tenants on March 22, 2019.

Regarding item 6, the tenants are claiming \$2,000.00 as compensation for one month having been issued a 4 Month Notice that the tenants did not dispute. The parties agreed that the tenants were not charged for March 2019 rent by the landlord. The tenants stated that they feel they are entitled to one month of rent as compensation for the condition of the rental unit and having to leave. The tenants confirmed that they did

not provide the landlord with written notice that they would be vacating the rental unit before the end of March 2019.

Regarding item 7, the tenants have claimed \$1,000.00 for the loss of apartment space. The tenants stated that they are claiming that amount for loss of use of areas of the rental unit between January 1, 2019 and February 29, 2019, including areas where they could not put furniture next to the walls due to the mould. The agent stated that the tenants denied access to the rental unit to address the mould in the rental unit. The tenants disagreed and stated that the only time they stated they would not allow contractors in was for repairs in late February as they were planning to vacate the next month in March 2019.

Regarding item 8, the tenants have claimed \$80.00 for the cost to replace a damaged TV table due to mould. The tenants did not provide a receipt in evidence and referred to several colour photos showing mould on the desk. The agent stated that with minimum effort, the TV table could have been cleaned and not damaged by mould and that the damage is a result of the tenants' lack of proper cleaning.

Regarding item 9, the tenants have claimed \$100.00 for the cost to replace a damaged bed frame due to mould. The tenants did not provide a receipt in evidence or photo evidence. This item was dismissed during the hearing as the tenants failed to provide sufficient evidence to meet the test for damages or loss, which will be discussed later in this decision.

Regarding item 10, the tenants have claimed \$300.00 for the cost to replace a damaged mattress due to mould. The tenants did not provide a receipt in evidence or photo evidence. This item was dismissed during the hearing as the tenants failed to provide sufficient evidence to meet the test for damages or loss, which will be discussed later in this decision.

Analysis

Based on the documentary evidence, the oral testimony, and on the balance of probabilities, I find the following.

Test for damages or loss

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 what was reasonable to minimize the damage or loss.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Landlord's claim

After thoroughly reviewing the documentary evidence and the testimony provided by the parties, I find the following.

Items 1 and 2 - I find the landlord's own action by turning off the automatic ventilation timer was more likely than not, the cause of the mould throughout the rental unit. Therefore, I find the tenants are not liable for the mould in the rental unit as the landlord provided no evidence that the tenants were instructed to keep the automatic fan on for 8 hours per day. I also find that BC Building Code article referred to by the tenants supports that the automatic fan should run for a minimum of 8 hours per 24 hour period to remove moisture from the air. I find that the landlord's decision to turn that off and to state at the hearing that there is nothing requiring the landlord to keep it on is both unreasonable and counterproductive to avoid mould growth in the rental unit.

Based on the above, I find the tenants' report from ABM to be more compelling than the reports submitted by the landlord, which I find to be inconsistent. Therefore, I find the landlord has failed to meet all parts of the test for damages and loss and I dismiss both items 1 and 2 in full, without leave to reapply due to insufficient and contradictory evidence.

Item 3 - I find the landlord owed March 2019 rent to the tenants, which the tenants were compensated for by the landlord not charging the tenant rent for March 2019. Section 51 of the *Act* states:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

[Emphasis added]

Based on the above, I find the landlord has failed to meet all parts of the test for damages or loss as the tenancy ended based on an undisputed 4 Month Notice issued by the landlord, and the parties had an agreement confirmed during the hearing that the tenants would vacate the rental unit in March 2019 if they did not have to pay March 2019 rent. Consequently, I dismiss this item in full, without leave to reapply, due to insufficient evidence.

Tenants' claim

Item 1 - Although the tenants are claiming for the cost of the \$420.00 ABM report, I find the tenants are responsible for this cost as they made the decision to hire an independent contractor to determine the cause of the mould and water issues. Therefore, I do not find the landlord is responsible for this cost and I dismiss this portion of the tenants' claim without leave to reapply, due to insufficient evidence.

Item 2 - The tenants are claiming \$150.00 for the cost of a move-out fee, which was dismissed during the hearing as noted above. I dismissed this item as the tenancy agreement indicates that the tenants are responsible for the move out costs as part of the tenancy agreement and the tenant ended based on an undisputed 4 Month Notice and as a result, the landlord is not responsible for the move out fee. As such, this item is dismissed without leave to reapply, due to insufficient evidence.

Item 3 - Although the tenants are claiming \$82.27 for a U-Haul related to moving, as noted above, this item was dismissed during the hearing as the tenants did not dispute the 4 Month Notice and the parties mutually agreed that the last month of rent would be waived if they vacated the rental unit in March 2019. As a result, I find the tenants have failed to meet the burden of proof and this item is dismissed without leave to reapply, due to insufficient evidence.

Item 4 - The tenants are claiming \$139.00 for a new desk due to mould damage. Section 7 of the *Act*, states the following:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Emphasis added]

In addition, part four of the test for damages or loss described above states:

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

Regarding this item, I agree with the agent that with minimum effort, the desk could have been cleaned and not damaged by mould and that the damage is a result of the tenants' lack of proper cleaning. Furthermore, I find the tenants failed to minimize the loss by failing to have content insurance. Therefore, I find the tenants have failed to meet the burden of proof and I dismiss this item in full, without leave to reapply, due to insufficient evidence.

Item 5 - The tenants are claiming \$2,000.00 for double the amount of the security deposit. The agent stated that the landlord continues to hold the tenants' \$1,000.00 security deposit. I find the landlord did comply with section 36 of the *Act* as the landlord mailed the outgoing Condition Inspection Report ("CIR") dated March 9, 2019 on March 22, 2019, which is within 15 days. In addition, I find the landlord applied towards the tenants' security deposit within 15 days of the end of tenancy date on March 9, 2019, by filing their application on March 21, 2019. Therefore, I find the tenants have failed to meet parts one, two and four of the test for damages or loss and I dismiss this item without leave reapply, due to insufficient evidence.

Item 6 - The tenants are claiming \$2,000.00 as compensation for one month having been issued a 4 Month Notice that the tenants did not dispute. I find the tenants have

already been compensated \$2,000.00 for March 2019 as the tenants continued to live in the rental unit beyond March 1, 2019, and the landlord waived March 2019 rent. Given the above, I find the tenants have failed to meet parts one, two and four for the test for damage or loss and I dismiss this item without leave to reapply, due to insufficient evidence.

Item 7 - The tenants have claimed \$1,000.00 for the loss of apartment space. The tenants stated that they are claiming that amount for loss of use of areas of the rental unit between January 1, 2019 to February 29, 2019, including areas where they could not have their furniture next to the walls due to the mould. The onus of proof is on the party making the monetary claim and I find the tenants have failed to provide how the tenants suffered \$1,000.00 in loss of use of the apartment space. The tenants provided no evidence that they could not use the bedroom, kitchen or other living areas and I find that the furniture not being close to windows or baseboards would not result in a \$1,000.00 depreciated value when the monthly rent is \$2,000.00 per month. Therefore, I find the tenants have failed to meet parts three and four for the test for damage or loss and I dismiss this item without leave to reapply, due to insufficient evidence.

Item 8 - The tenants have claimed \$80.00 for the cost to replace a damaged TV table due to mould. The tenants did not provide a receipt in evidence and referred to several colour photos showing mould on the desk. I agree with the agent that with minimum effort, the TV table could have been cleaned and not damaged by mould and that the damage is a result of the tenants' lack of proper cleaning. Furthermore, I find the tenants failed to minimize the loss by failing to have content insurance. Therefore, I find the tenants have failed to meet the burden of proof and I dismiss this item in full, without leave to reapply, due to insufficient evidence.

Item 9 - The tenants have claimed \$100.00 for the cost to replace a damaged bed frame due to mould. The tenants did not provide a receipt in evidence or photo evidence. This item was dismissed during the hearing as the tenants failed to provide sufficient evidence to meet parts three and four for the test for damages or loss. Therefore, this item is dismissed in full without leave to reapply, due to insufficient evidence.

Item 10 - The tenants have claimed \$300.00 for the cost to replace a damaged mattress due to mould. The tenants did not provide a receipt in evidence or photo evidence. This item was dismissed during the hearing as the tenants failed to provide sufficient

evidence to meet parts three and four for the test for damages or loss. Therefore, this item is dismissed in full without leave to reapply, due to insufficient evidence.

As neither application before me had merit, I do not grant either party the recovery of the cost of the filing fee.

As the landlord continues to hold the tenants' security deposit of \$1,000.00, and pursuant to sections 38 of the *Act*, I order the landlord to immediately return the tenants' \$1,000.00 security deposit. Should the landlord fail to comply with my order and/or should the tenants fail to receive their \$1,000.00 security deposit, I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$1,000.00.

Conclusion

The applications of both parties are dismissed without leave to reapply.

The landlord has been ordered to immediately return the tenants' \$1,000.00 security deposit. Should the landlord fail to comply with my order and/or should the tenants fail to receive their \$1,000.00 security deposit, the tenants have been granted a monetary order pursuant to section 67 of the *Act* in the amount of \$1,000.00.

This decision will be emailed to both parties. The monetary order will be emailed to the tenants only for service on the landlord. Should the tenants require enforcement of the monetary order, the tenants must first serve the landlord with the monetary order. This order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 11, 2019

Residential Tenancy Branch