Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

This hearing was reconvened from two previous hearings in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for damage to the unit - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

At the second hearing the Tenants stated that they did not receive any evidence from the Landlord in the period between the original hearing and the second hearing. The Landlord states that the evidence package provided to the RTB on June 25, 2019 was sent to the Tenants on the same day by registered mail. The Landlord's postal evidence of this service does not indicate that the package was sent by registered mail and it appears to be a priority post service, not registered mail. There is no evidence that either of the Tenants were required to sign for delivery of the evidence package. The Landlord states that it did not check to see if the package had been delivered to the Tenants.

Rule 3.14 of the Rules of Procedure provides that evidence intended to be relied upon at the hearing must be received by the Respondent. As the Landlord was unable to provide evidence to support its oral evidence that the Tenants were served directly with

the evidence package that was provided to the RTB on June 25, 2019 and as the Tenants have denied receipt of that evidence package I find on a balance of probabilities that the Landlord has not provided sufficient evidence of service of the evidence package. I therefore decline to consider this package.

The Landlord believes that it made an amendment to its application but cannot confirm when or how this amendment was made. It is noted that the Landlord's evidence package provided to the RTB on June 25, 2019 contains an amendment application however there is nothing to indicate that this amendment was filed with the RTB as an amendment and not as part of an evidence package. Further the evidence package containing the amendment has been declined for consideration. The Landlord agrees to keep the original claimed amount to $10,407.34 as set out in its monetary order worksheet.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts. The tenancy under written agreement started on October 1, 2018 for a fixed term to end September 30, 2019. Rent of $1,600.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $800.00 as a security deposit. Although the Parties mutually conducted a move-in inspection with a report completed by the Landlord a copy of that report was not provided to the Tenants until it was provided with the Landlord's application made

February 28, 2019. The Landlord made no offers for a move-out inspection. The Landlord changed the locks to the unit on January 6, 2019.

The Tenants argue that the matter of the mold was the subject of a previous decision dated March 18, 2019 and that the Landlord's current application should therefore not be considered.

The Landlord states that the Tenants did not pay rent for December 2019 and that the Landlord then served the Tenants with a 10-day notice to end tenancy for unpaid rent. The Landlord states that an order of possession was obtained on that notice on January 6, 2019. The Landlord refers to a previous Decision dated January 2, 2019. The Landlord claims $4,000.00 as lost rental income for January, February and half of March 2019 due to the Tenants breach of the fixed term and due to the damages left by the Tenant. The Landlord states that on March 1, 2019 the Landlord advertised the unit online with monthly rent of $1,600.00. No copy of that advertisement was provided. The Landlord states that it obtained a new tenant for March 15, 2019 when the unit was finally ready for occupancy. The Landlord states that no advertising was done until the repairs to the floors were made and the walls were painted. The Landlord states that the baseboards were contaminated with mold and that the Tenants caused all the damage.

The Tenant states that the Landlord ended the tenancy with the notice to end tenancy for unpaid rent and changed the locks on January 6, 2019. The Tenant states that they complied by moving out of the unit. The Tenant argues that as a result they cannot be held liable for the rents claimed by the Landlord. The Tenant states that they did not cause damage to the unit.

The Landlord states that the tenancy agreement required the Tenants to open their own hydro account for the unit. The Landlord states that the Tenants closed this account. The Landlord claims $500.00 for hydro costs for the period January 3 to March 13,

2019. The Landlord states that the bills for this period total $666.78 and have been provided as supporting evidence to this claim. The Tenant states that the hydro was cancelled by the Tenants and that as they were not occupying the unit they are not liable for the consumption after they moved out.

Landlord states that the Tenants caused mold to appear in the unit by not ensuring proper ventilation in the unit. The Landlord states that the Tenants left a bed against a wall. The Landlord believes that the beds were damp at move-in as there is no other explanation for the presence of mold at that area and the puddle of water under the affected bed. The Landlord states that the mold report says the unit had poor circulation. The Landlord states that the Tenants caused mold to appear in the unit by not ventilating the bathroom while showering and by keeping two bedrooms closed and without heat. The Landlord does not have direct evidence of the showering practices and states that the bedrooms were observed by the Landlord. The Landlord states that the humidity levels were so high that water was left pooling under a bed.

The Tenants state that mold was discovered in their unit on or about November 14, 2018 and that they informed the Landlord immediately. The Tenant states that there was no water under the bed and provide a photo of under the bed. The Tenant states that mold was not present on the lower mattress and only appeared at the upper edge of the mattress that was along the wall. The Tenant states that the mattress was only 3 months old when the mold was discovered. The Tenant states that they did nothing to cause the mold. The Tenant states that mold was also on the exterior of the home. The Tenant states that the mold was pre-existing and provide a letter from a cleaning company of pre-existing mold. The Tenants provides photos that is stated to show moisture and mold in the attic, along with asbestos, taken on November 15, 2018. The Tenants state that after this date the Landlord closed their access to the attic. The Tenants state that the mold inspection company conducted their inspection on

November 22, 2018. The Tenants state that they were working with the Landlord to treat the mold.

The Landlord states that pre-existing tenants from between 2014 and September 2018 provided letters that no mold was present during their tenancies. The Landlord states that it purchased the unit 3 years ago while the Landlord was a tenant in the unit. The Landlord does not provide the dates when the Landlord was a tenant and states that it did not know this evidence would be relevant.

The Landlord states that the unit was freshly painted in approximately the spring of 2016 and that at move-in no mold was noted on the condition inspection report. The Landlord states that the attic was inspected for mold, leaks and water damage in November 2018. The Landlord states that the air other areas of the unit that were affected by mold were also tested in November 2018. The Landlord states that no water leak was found in the attic and that the company told the Landlord that the attic should be locked to prevent access. The Landlord provides an email dated December 3, 2019 from the mold inspection company referencing the mold inspection conducted on November 22, 2018. I note that this email indicates mold was found in the attic and that the mold in this area should be remediated by a professional contractor. The Landlord states that all the affected areas of the house were inspected for water, leaks and damage in November 2018.

The Landlord claims $752.54 as the costs of the mold company air testing and inspections. The Landlord states that the Tenants are liable for these costs as the Tenants asked for the inspection and as the Landlord had to ensure that the unit was good for the next tenancy. The Tenant states that the Landlord was contacted because

of the mold found on their mattress and that when the tests were requested it was because the Tenants found water on the wall panels of one of the bedrooms.

The Landlord claims the costs of $130.00 to store the Tenants' belongings for two months. The Landlord states that this cost does not include the mattresses that were damaged by mold as these were taken to the dump. The Landlord states that no list was made of the items placed in storage that included bedding, clothes, jewellery and dishes. The Landlord states that after changing the locks on January 6, 2019 the Tenants were given an opportunity to retrieve the belongings but that they told the Landlord to throw them away. The Landlord states that it did not throw away the items as the Landlord felt they were still good and that the Tenant would want them back. The Tenant states that they asked the Landlord to throw away the belongings left at the unit as they were damaged by the mold. The Tenants state that one of them was pregnant at the time. The Tenant states that they were told in an email from the mold company to leave everything in the unit as it had to be removed by professionals.

The Landlord claims $483.00 for the loss of employment income, for the costs of sleeping medications and for the cost of attending the hearings on this dispute. The Landlord states that it lost employment income to deal with the inspections of the unit. The Landlord states that it could not obtain an agent to attend the inspections because the Landlord had their own concerns to protect their investment and to ensure no risk to future tenants. The Tenant states that they did not cause the Landlord to miss any work or to require medications.

The Landlord states that the Tenants failed to leave the unit clean and claims a lump sum of $2,456.25. The Landlord states that of this amount $300.00 is for the costs paid to one person, $180.00 was paid to a cleaning company, $56.25 was the cost of gas and dump fees to remove belongings left behind by the Tenants, and the remaining amount of $1,700.00 is in relation to costs that have not been incurred for people who helped clean and for the costs of feeding those people. The Landlord states that no

invoices were provided for this last amount. The Landlord states that the Tenants left the equivalent of 4 and ½ trucks full of garbage, furniture and other belongings. It is noted that the Landlord's two dump fee receipts provided as evidence total $36.25. The Landlord states that the regular cleaning of the unit was completed on February 15, 2019 and that the cleaning after the repairs was completed March 10, 2019.

The Tenants state that the only cleaning done when they moved out was spot cleaning in the kitchen. The Tenants state that they left all belongings that were contaminated with mold. The Tenatns states that the Landlord's mold company and restoration company advised the Tenants in the presence of the Landlord not to move these items as it could spread further damage. The Tenants state that the mold inspection company told the Tenants that until the results are back they should not move their belongings. The Tenants argue that they could not leave the unit reasonably clean for this reason and because the Landlord changed the locks on the unit.

The Landlord claims $643.49 as material costs and cleaning products. Of this amount the Landlord claim $87.65 for mold removal products. The Landlord states that the Tenants left the unit with mold that required cleaning.

The Landlord claims of $662.06 for the costs of a shed door and locks. The Landlord states that during the tenancy the shed was vandalized with the locks being cut and damaged. The Landlord states that the Tenants had access to the shed and that the Landlord only discovered the damage on January 4, 2019. The Landlord states that it believes the Tenants damaged the shed door and locks as this is where they kept some belongings and a crowbar was found inside the shed. The Landlord states that the total amount claimed includes a cost of $400.00 to replace couches that were provided to the Tenants for the tenancy and were left behind by the Tenants. The Tenant states that the did not leave the shed damaged, that they had put the locks on the shed and that they were the only ones with keys for entry. The Tenant states that the Landlord gave them the couches that were left behind from a previous tenancy because the Landlord

did not want the costs and efforts to dismantle and remove the couches. The Tenant states that they left the couches behind as there was mold on them. The Tenant states again that they were informed that they should not handle contaminated items and that they were told to leave all the contaminated items at the unit.

The Landlord claims $780.00 for its labour costs. The Landlord states that amount includes costs for mold removal products, replacement costs for damaged carpets left ruined and stained and labour costs to remove the baseboards that were damaged when the Landlord removed the carpets. The Tenant states that the carpets were damaged by the mold.

Analysis

The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. Preconditions that must be met before this principle will operate are:

1. the same question has been decided in earlier proceedings;
2. the earlier judicial decision was final; and
3. the parties to that decision (or their privies) are the same in both the proceedings.

A review of the previous decision dated March 18, 2019 indicates that the question being determined was whether the Tenants were entitled to damages arising from the presence of mold. It was found that the Tenant did not provide sufficient evidence to substantiate the costs claimed. As the question being determined in these proceedings is whether the Landlord is entitled to costs for remediating the mold as having been caused by the Tenants I consider that this is a different matter than was considered in

the previous decision. As a result, I find that I am not stopped from considering the Landlord's application.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Given the undisputed evidence that mold appeared in the unit on November 14, 2019, the undisputed evidence of mold on the exterior of the unit, the Landlord's evidence of mold being present in the attic on November 22, 2019 and, most significantly, the Tenant's evidence from professional cleaners of mold being present prior to the tenancy, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants caused the mold to appear in the unit. There is no evidence that at the outset of the tenancy the Tenants were informed of the pre-existing mold or given instructions on reducing or removing any mold that appeared. For these reasons I find that the Landlord has not substantiated that the Tenants negligently caused the mold to worsen or spread.

As the Landlord has not substantiated that the Tenants caused the mold and as it is the Landlord's responsibility to ensure that a unit is suitable for occupation, I consider that the costs for the mold inspections or remediation costs are not the Tenants' responsibility. I therefore dismiss the claims for $643.49 as material costs and cleaning products, $752.54 as the costs of the mold company inspections and $780.00 for the Landlord's labour in remediating the unit. As no medical documentation of the reason the sleep medication was prescribed I find that the Landlord has not provided evidence to substantiate that anything done by the Tenants caused the Landlord to require sleep medication. There is nothing in the Act that provides for a landlord to claim costs for carrying out its obligations or to attend hearings in a claim against a tenant. I find therefore that the Landlord is not entitled to compensation for having to attend hearings

on its own application. I dismiss the Landlord's claim for loss of work to attend inspections of the rental unit, to attend the hearings and for the cost of medications of $483.00.

The Landlord provided no detailed invoice for the cleaning claim of $1,700.00 and only provided vague oral evidence of the cleaning done for this amount. As there is no way to determine what amount of this cost is not related to the costs of the mold clean-up for which the Tenants are not liable, I find that the Landlord has not substantiated this cleaning cost and I dismiss this claim. As the cleaning invoice for $300.00 includes a sum for flooring damaged by the mold, a sum for cleaning on December 6, 2018 that can only be taken as mold cleaning, I find that the Landlord has not substantiated an entitlement to these costs. As the cost itemized for January 28, 2019 occurred after the unit was cleaned by professionals, I consider that this cost was in relation to the mold and not the state of the unit as caused by the Tenants at move-out. I therefore dismiss this claimed cost. While the only cleaning cost that can be directly tied to the Tenants responsibility for leaving a unit clean and not for cleaning from the presence of mold is from the professional cleaners in the amount of $180.00 and dated January 13, 2019**,** given the undisputed facts that the Tenants were locked out of the unit on January 6, 2019 I find that the Landlord effectively stopped the Tenants from leaving the unit reasonably clean and I therefore dismiss this cost.

The Landlord's evidence is that it removed the equivalent of 4 and ½ trucks full of garbage, furniture and other belongings. This evidence is not consistent with the Landlord's documentary evidence of only two dump receipts for a total of $36.25. Nonetheless, accepting the undisputed evidence that the only items taken away by the Landlord were contaminated by mold and as the Tenants have not been found liable for the appearance of mold, I find on a balance of probabilities that the Landlord has not substantiated that the Tenants are liable for the removal costs of the damaged items and I dismiss the claim for dump fees. As the Landlord provided no receipts or invoices

for gas costs, I find that the Landlord has not substantiated that it incurred the gas costs claimed and I dismiss this claim.

Although the Landlord gives evidence that the Tenants were given opportunity to remove some items after they were locked out, as the Landlord provides no invoices or any other detail to support the cost of storing these items I find that the Landlord has not substantiated that this cost was actually incurred, and I dismiss the claim for storage costs.

It is noted that there are no invoices for the utility consumption provided in the Landlord's evidence packages that were accepted for this dispute. Given the Tenants' evidence that the unit was not occupied by them after January 6, 2019 I consider that the Tenants could not have consumed any utility after this date. I find therefore that the Landlord has not substantiated that the hydro costs past this date were caused by the Tenants. As the Landlord provided no utility invoices for consumption prior to January 6, 2019 I find on a balance of probabilities that the Landlord has not substantiated any of these costs as well. I therefore dismiss the claim for hydro costs.

There is no evidence of the age of the couches that were left for the Tenants' use. The value lost cannot therefore be determined. It is undisputed that the couches were left for the Tenants use. There is no evidence that the couch was not a gift or that the couches were expected to be left in the unit at the end of the tenancy. Finally, the Landlord provided no evidence of having replaced the couches and having incurred the cost of $400.00. For these reasons I find that the Landlord has not substantiated this claim and I dismiss it.

Of the Landlord's total claim of $662.06 for the costs of a shed door and locks, it gave evidence that this amount included $400.00 for the couches. This leaves $262.06 as the amount remaining for the costs being claimed for the shed and locks. Given the Tenants' undisputed evidence that they purchased the locks on the shed, I find on a

balance of probabilities that any damage to these locks are not evidence of a loss to the Landlord and I dismiss the claim for cost of the locks. The only document provided by the Landlord that details a shed is a packing slip dated April 16, 2018. No costs or price is noted on this document. The only other document provided by the Landlord that may be in relation to the shed door is a quote for $161.59 dated January 25, 2019. However, this is not evidence that the Landlord incurred the cost claimed of $262.00. The Landlord provided no other evidence of costs or value associated with the shed door. For these reasons even if the Tenants caused the damage to the shed door or were negligent about the security of the shed door, I find that the Landlord has not provided sufficient evidence to substantiate that it incurred either a loss of value or costs to replace the shed door and I dismiss the claim in relation to the shed door.

Section 57(2) of the Act provides that the landlord must not take actual possession of a rental unit that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules. The Landlord locked the Tenants out of the unit on January 6, 2019 and there is no evidence that the Landlord obtained a Writ for this possession of the unit for this lock out date. The Tenants have not been found liable for the mold and it is the Landlord's evidence that the unit could not be re-rented until the unit was remediated from the mold. For these reasons I find that the Landlord has not substantiated that the Tenants caused a loss of rental income from ending the fixed term tenancy and I dismiss the Landlord's claim for lost rental income.

As none of the Landlord's claims have been successful I find that the Landlord is not entitled to recovery of the filing fee and in effect the Landlord's application is dismissed in its entirety. I order the Landlord to return the security deposit of $800.00 plus zero interest to the Tenants forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenants an order under Section 67 of the Act for **$800.00**. If necessary, this order may be filed in the 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 RTB under Section 9.1(1) of the Act.

Dated: October 2, 2019

Residential Tenancy Branch