



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACE AGENCIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on June 28, 2019 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by registered mail on July 7, 2019. The Landlord confirmed receipt. Pursuant to section 88 and 89 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The Landlord's Agent testified that she served the Tenants with her documentary evidence by registered mail on September 27, 2019. The Tenant stated that the Landlord's evidence was not received. The Landlord's Agent confirmed the Tenant's mailing address during the hearing as well as provided a Canada Post tracking number in support of the mailing. Based on the oral and written submissions of the Landlord's Agent, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenants are deemed to have been served with the Application and documentary evidence on October 2, 2019, the fifth day after their registered mailing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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 this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Are the Tenants entitled to recover the filing fee, pursuant to Section 72 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the one-year fixed term tenancy began on April 1, 2017 and was meant to end on March 31, 2018. Rent in the amount of \$1,500.00 was due to the Landlord each month. The Tenants paid a security deposit in the amount of \$750.00, which has since been returned to the Tenants. The tenancy ended early on June 30, 2017.

The Tenants are seeking monetary compensation in the amount of \$6,225.00. The Tenant stated that shortly after moving into the rental unit, she noticed some mold growing in a basement cellar. The Tenant stated that she subsequently employed the services of a mold inspector who determined that the impacted area contained mold.

The Tenant stated that she notified the Landlord's Agent on May 21, 2017 about the mold found in the cellar via email and sent the results of the inspection on May 25, 2017. The Tenant stated that the Landlord did not take action to address the mold issue in the cellar, therefore, the Tenants provided the Landlord's Agent with their notice to end tenancy on June 22, 2017, with an effective vacancy date of June 30, 2019.

In response, the Landlord's Agent stated that the parties conducted a condition inspection report at the start of the tenancy during which there was no indication of mold being present in the basement cellar. The Landlord's Agent stated that there was an agreement between the parties that the cellar was not to be used as living space as it only contained a hot water tank. The Landlord's Agent stated that she had no

knowledge of the presence of mold in the rental unit until she received the mold inspection report. The Landlord's Agent stated that she passed on the Tenant's concerns to the Landlord, however, the Landlord's Agent received the Tenants' notice to end tenancy prior to the Landlord having an opportunity to take the necessary steps to remove the mold.

Furthermore, the Landlord's Agent stated that the mold inspection report indicated that there was no mold found anywhere else in the rental unit and that it was only found in the basement cellar which was not to be used as a living space. The Tenant stated that she did not use the cellar, however, could smell the mold from the top of the stairs which caused her some concern.

The Tenants are seeking the return of \$525.00 which was the cost of the mold inspection. The Tenants are also seeking \$4,500.00 for the full return of the monthly rent over the duration of the tenancy. Lastly, the Tenant stated that they were unable to find another residence for the same monthly rent, therefore, on July 1, 2017 the Tenants moved into a new residence with a monthly rent of \$1,650.00. As such, the Tenants are seeking the difference of rent in the amount of \$1,200.00 for the remaining portion of the one-year fixed term tenancy.

If successful, the Tenants are also seeking the return of the filing fee paid to make the Application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

In relation to the monetary compensation sought by the Tenants, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

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 for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 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.

In this case, the burden of proof is on the Tenants to prove the existence of the damage or 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 Tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenants did what was reasonable to minimize the damage or losses that were incurred.

The Tenants are claiming \$525.00 in relation to the cost associated with employing a mold inspector. The Tenant provided a receipt in support of the cost associated with the mold inspection. I find that the Tenants provided insufficient evidence to demonstrate that they expressed their concerns about the mold to the Landlord, prior to having a mold inspection completed. As such, I find that the Tenant did not mitigate her loss by informing the Landlord as soon as she became aware of the mold prior to arranging for an inspection. I dismiss this portion of the Tenants' claim without leave to reapply.

The Tenants are also seeking a full reimbursement of the rent paid to the Landlord during the three months that the Tenants occupied the rental unit in the amount of \$4,500.00. In this case, I find that the Tenants have provided insufficient evidence to demonstrate that they have suffered a loss as a result of there being mold in the basement cellar. I accept that the parties agreed that the mold was only found in the basement cellar which was not to be occupied by the Tenants and only stored the hot-water tank. As such, I dismiss this portion of the Tenants' claim without leave to reapply.

The Tenants are also seeking monetary compensation as a result of having to move out of the rental unit and moving into a new residence at a higher rent. The Tenants are claiming \$1,200.00 which represents the difference in rent amount over the course of what would have been a one-year tenancy. In this case, I find that the Tenants provided the Landlord with their notice to end tenancy on June 22, 2017 with an effective vacancy date of June 30, 2017. As such, I find that the Tenants chose to end their tenancy on their own accord. I find that if the Tenants felt as though the Landlord was not taking sufficient action to deal with the mold in the cellar, the Tenants were at liberty

to apply for a remedy under the *Act* at that time, in lieu of ending their tenancy early. In light of the above, I dismiss the Tenants claim without leave to reapply.

As the Tenants were not successful, I find that they are not entitled to the return of their filing fee.

Conclusion

The Tenants have provided insufficient evidence to support their monetary claims. As such, the Tenants' Application is dismissed without leave to reapply.

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: October 11, 2019

Residential Tenancy Branch