



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 03, 2019 (the “Application”). The Tenant applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement and for compensation for monetary loss or other money owed.

The Tenant filed an amendment October 03, 2019 removing a request for return of the security deposit.

The Tenant appeared at the hearing with the Advocate. The Landlord appeared at the hearing with Legal Counsel and two witnesses. The witnesses were outside of the room until required.

The Landlord provided his correct legal name which is reflected in the style of cause.

The parties agreed the Tenant vacated the rental unit October 23, 2019. Given this, the Tenant withdrew the request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

I explained the hearing process to the parties who did not have questions when asked. The Tenant and Landlord provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the

parties and all documentary evidence pointed to during the hearing. I have only referred to the evidence I find relevant in this decision.

Issue to be Decided

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

Background and Evidence

The Tenant sought the following compensation:

Item	Description	Amount
1	Loss of wages November 2018 due to sickness due to mold	\$1,025.00
2	Cost of report re. mold	\$40.00
3	Medical prescription and over the counter medications for sickness due to mold	\$108.35
4	Loss of use of bedroom due to moisture	\$2,062.50
5	Rent of \$825.00 for May to September for not being able to have company	\$4,125.00
6	Cost of movers	\$400.00
7	Rent of \$825.00 / 2 = \$412.50 for December to May 2019	\$2,475.00
	TOTAL	\$10,235.85

There is no issue that there was a tenancy agreement between the parties in relation to the rental unit. The parties agreed on the following. The tenancy started April 30, 2017 and was a month-to-month tenancy. Rent was \$825.00 per month due on the first day of each month.

The Tenant's claim is based on the Tenant's position that there was mold in the rental unit which affected her health and use of the rental unit. The Tenant testified that there were two mold issues in the rental unit. The first was in the crawl space due to a pipe bursting. The second was a general moisture issue that was present when she moved into the rental unit.

The Tenant testified as follows. There was excessive moisture in the rental unit when she moved in. She thought something was wrong. There was an odour and her dehumidifier filled up every 24 hours. Paper in the rental unit was moist. She told the Landlord there was an issue. The Landlord said everything was fine.

The Tenant testified that there was mold in the bedroom and living room flooring from the pipe bursting in the crawl space. She testified that there was mold in the bathtub surround and exterior wall of the bathroom.

The Tenant testified that, in May, there was a heat wave and she woke up gasping for air, her eyes were running and her throat burned. She said she called the Landlord telling him there was a problem but the Landlord said there was no problem. The Tenant testified that, two days later, the Landlord said he would get the problem sorted out. The Tenant testified that the Landlord got an air purifier with a "Hepi-fan". I understood the Tenant's testimony in this regard to relate to her position that the issue was mold in the rental unit.

The Advocate submitted that the Tenant still experiences illness from the mold issue and pointed to a document submitted showing the Tenant is booked for a further medical test in November.

The Tenant relied on the following documentary evidence to support her position that there was mold in the rental unit. A letter submitted by the Landlord from a restoration company that addresses moisture in the rental unit. A report showing four different types of mold present in the rental unit. Photos of the rental unit showing mold. Letters from witnesses about mold in the rental unit.

In relation to the report about mold, the Tenant testified as follows. She purchased a kit from a hardware store to test the rental unit for mold. She collected samples from around the rental unit using a vacuum and cup. She took samples from everywhere in the rental unit including the carpet and walls. She sent the samples to the company that provided the report. The company did an analysis and sent the report back.

The Tenant pointed to a witness statement submitted in relation to collecting the samples used to produce the report about mold. The Tenant confirmed that nobody from the company that produced the report attended the rental unit to make observations or collect samples.

Legal Counsel for the Landlord made the following submissions. There is no medical evidence linking the Tenant's illness to mold in the rental unit. The letter from the restoration company submitted shows the company did not have concerns about mold. The Landlord submitted a letter from the plumbing company that worked on the rental unit. The plumbing company did not find mold in the rental unit.

The Landlord denied that the photos submitted by the Tenant show mold in the rental unit.

The parties provided the following further testimony and submissions in relation to the specific items claimed for.

Item #1 - Loss of wages November 2018 due to sickness due to mold

The Tenant testified that this related to the pipe in the crawl space bursting. She testified that she was away and, when she came back to the rental unit, she was ill and could not work in November. The Tenant testified that her nose was bleeding. The Tenant referred to a prescription receipt submitted and testified that this shows how sick she was.

Legal Counsel and the Landlord provided the testimony and submissions noted above.

Item #2 - Cost of report re. mold

The Tenant referred to evidence submitted showing the cost of purchasing the kit to test for mold and the cheque sent to the company that provided the report showing the cost of these. The Tenant sought reimbursement for the cost.

Legal Counsel and the Landlord did not make further submissions on this item.

Item #3 - Medical prescription and over the counter medications for sickness due to mold

The Tenant referred to a prescription receipt submitted in relation to this item. The Tenant testified that other medications were over the counter medications so she could not provide evidence relating to these.

Legal Counsel for the Landlord submitted that there is no medical evidence linking the Tenant's health issues with mold in the rental unit.

Item #4 - Loss of use of bedroom due to moisture

The Tenant testified as follows. She could not use the second bedroom in the rental unit due to moisture. The moisture level in the room was extreme. She brought this to the Landlord's attention. She had to keep changing the dehumidifier.

Legal Counsel submitted that the Tenant has not provided evidence that she did not use the second bedroom. He submitted that there is no evidence of mold causing the Tenant to not be able to use the second bedroom.

The Landlord testified that the Tenant had her computer set up in the second bedroom. The Landlord also testified that the Tenant did not keep the heat on which would have helped with moisture.

In reply, the Tenant testified that she had a laptop that she used in the living room or kitchen. The Tenant testified that the issue was with paper in the second bedroom. The Tenant referred to witness statements submitted showing guests could not stay in the room.

Item #5 - Rent of \$825.00 for May to September for not being able to have company

The Tenant testified that she could not have visitors at the rental unit due to the mold and moisture issues in the rental unit. I understood the Tenant to testify that she asked the Landlord to have a professional attend and address the mold and moisture issues in the rental unit. The Tenant testified that the Landlord supplied an air purifier. The Tenant referred to the witness statements from others saying they could not come to visit. The Tenant testified that she could only be in one room at a time with the air purifier on in order to be able to breathe.

Legal Counsel submitted that the Tenant has not provided evidence of black mold in the rental unit. Legal Counsel referred to the letters from the restoration company and plumbing company stating there was no mold in the rental unit.

Item #6 - Cost of movers

The Tenant testified that it cost \$400.00 to move. The Tenant testified that she did not want to move. The Tenant testified that she asked the Landlord to have a professional attend the rental unit and address the mold and moisture issues.

Legal Counsel submitted that the Tenant is not entitled to moving costs even if there was mold in the rental unit. Legal Counsel submitted that the Tenant chose to move on her own accord. Legal Counsel pointed out that the Tenant had not submitted evidence of the cost of moving.

Item #7 - Rent of \$825.00 / 2 = \$412.50 for December to May 2019

The Tenant testified as follows. She did not know what was causing her sickness until Mother's Day. She was having a hard time focusing and sleeping. She can sleep now that she has moved. Things are clear now that she has moved. She was led to believe the Landlord would address the mold and moisture issues.

Legal Counsel submitted that there is no medical evidence linking the Tenant's health issues to mold in the rental unit. Legal Counsel referred to the letter from the restoration company.

Witnesses

The Landlord called G.S. as a witness. I do not find it necessary to outline his testimony. G.S. did not seem to know why he was a witness in this proceeding. He could not say what address his testimony related to when asked. I put no weight on G.S.'s testimony as I do not find him to be a reliable source of information.

The Landlord did not call J.B. as a witness.

Documentary evidence

The Tenant submitted correspondence she sent to the Landlord about the issues raised.

The Tenant submitted the report about mold in the rental unit which includes the following. An eight page report. One page that includes the results of the analysis which shows four types of mold were present in the samples. It shows the conclusion as "unusual" which is defined below as:

...the presence of current or former growth was observed in the analyzed sample. An abundance of spores are present, and/or growth structures including hyphae and/or fruiting bodies are present and associated with one or more of the types of mold/fungi identified in the analyzed sample.

The remainder of the report is general information about mold.

The Tenant submitted information from the internet about mold.

The Tenant provided written submissions that state in part the following. The second bedroom was so damp that her papers would jam in the printer. She could not use the second bedroom as an office or for company. She could only use the second bedroom for storage. In November, when she returned to the rental unit after being away, she got sick including shaking, fever, nose bleeds and green phlegm. She was tired, could not sleep properly, felt like she was getting a cold and could not focus for months. She purchased a moisture detector device which showed there was excessive moisture in the rental unit.

The Tenant submitted an email from T.M. stating that she attended the rental unit in May and could smell the odour of mold. It states that it was difficult to take a deep breath.

The Tenant submitted a witness statement from L.P. stating as follows. The mold smell in the rental unit was very pronounced and hindered breathing. She chose not to visit the Tenant at her home because of this. She assisted the Tenant with taking mold samples to send for analysis.

The Tenant submitted photos of the rental unit during repairs.

The Tenant submitted a witness statement from R.B. stating as follows. On one occasion, he stayed in the second bedroom and felt the dampness in it. He woke up with extreme congestion. He stayed at the rental unit two further times and experienced coughing and congestion. This was due to black mold in the walls and underneath the carpets. He could no longer visit the Tenant because of this.

The Landlord submitted a letter from the plumbing company that dealt with the crawl space as well as the tub and surround. It states that they did not notice any mold.

The Landlord submitted a letter from a restoration company that attended the rental unit in mid July to "access damage and inspect interior areas of home for potential moisture uses that may be causing mould." The letter states that the "only area that presented moisture concerns was in bathroom around shower and on exterior wall at baseboard level." It states that the author "did not notice any musty or mould smells in the home".

Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

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

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The Landlord's obligations in relation to maintaining the rental unit are set out in section 32 of the *Act* which states:

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.

Further, section 28 of the *Act* states that the Tenant was entitled to quiet enjoyment of the rental unit including freedom from unreasonable disturbance.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

As stated, the Tenant's claim is based on the Tenant's position that there were mold or moisture issues in the rental unit which affected her health and use of the rental unit.

The Landlord denied there was mold in the rental unit and relied on the letter from the restoration company and letter from the plumbing company to support this position. Legal Counsel for the Landlord submitted that the Tenant did not provide medical evidence linking the Tenant's health issues to mold in the rental unit.

There is the following evidence before me about the presence of mold in the rental unit:

- The Tenant's testimony;
- Correspondence from the Tenant to the Landlord about mold and moisture issues in the rental unit;
- The letter from the restoration company;
- The report about four types of mold in the rental unit;
- Photos of the rental unit showing mold; and
- Letters from witnesses about mold in the rental unit.

I do not find the Tenant's testimony or correspondence from the Tenant to the Landlord about mold and moisture issues in the rental unit to be sufficient evidence of mold in the rental unit when the Landlord denied there was mold in the rental unit and submitted two letters that support his position. I therefore consider the further documentary evidence submitted to support the Tenant's testimony.

The letter from the restoration company does not support the Tenant's testimony about mold in the rental unit. It does not state that there was mold in the rental unit. It states that there was a moisture issue in the bathroom around the shower and on the exterior wall at the baseboard level. It does not state that there was a moisture issue in the second bedroom. It states that the author did not notice a musty or mold smell in the rental unit.

I do not find the report about mold in the rental unit to be compelling or reliable evidence for the following reasons. It is the Tenant who took the samples analyzed using a vacuum and cup. There is insufficient evidence showing this is a reliable way to collect samples to determine the presence of mold in the rental unit. There is insufficient evidence about where the samples were taken or how many samples were taken. There is insufficient evidence about what samples lead to the results reported. The report itself is not detailed. It simply indicates there were four types of mold present and states a conclusion of "unusual" without a further analysis about mold in the rental unit.

The photos of the rental unit are not sufficient to prove there was mold in the rental unit. The Landlord denied the photos show mold. I cannot determine from the photos whether they show mold. Even if I accept that the photos show mold, I cannot determine from the photos what type of mold it is.

I do not find the letters from the witnesses to be compelling or reliable evidence for the following reasons. There is insufficient evidence showing these witnesses are able or qualified to identify the presence of mold or types of mold. It is my understanding from their letters that their opinions about mold in the rental unit are based on dampness and smell which I do not find sufficient. The witness statement from R.B. is unsigned and thus carries little weight.

I have considered whether the above evidence taken together is sufficient to prove there was mold in the rental unit. I do not find that it is. I do not find the evidence sufficiently compelling or reliable even when considered together.

The Tenant has not submitted an assessment of the rental unit from a professional who attended the rental unit and is qualified to identify and assess the presence of mold. This is the type of evidence that will usually be required on an application of this nature.

In the absence of further evidence about mold in the rental unit, I am not satisfied there was mold in the rental unit of such a type, nature or extent that I can find the Landlord breached the *Act* in relation to maintaining the rental unit or protecting the Tenant's right to quiet enjoyment.

Even if I accepted there was mold in the rental unit, I am not satisfied the Tenant's health issues were caused by mold in the rental unit. I do not find the Tenant's testimony that there is a link between mold and her health issues sufficient. I find there needs to be some medical evidence supporting this. The only evidence submitted to support the Tenant's testimony is a prescription receipt and patient instructions for a

medical test. Neither of these show or support that there is a link between the Tenant's health issues and mold in the rental unit. Neither of these provide information about the cause of the Tenant's health issues.

In the circumstances, I am not satisfied there was mold in the rental unit that affected the Tenant's health or use of the rental unit. Nor am I satisfied the Tenant's health issues are caused by mold in the rental unit. Therefore, I am not satisfied the Tenant has proven the basis for the following claims:

- Item #1 - Loss of wages November 2018 due to sickness due to mold
- Item #3 - Medical prescription and over the counter medications for sickness due to mold
- Item #6 - Cost of movers
- Item #7 - Rent of \$825.00 / 2 = \$412.50 for December to May 2019

Although related to the above findings, I make the following further findings in relation to the remaining claims.

In relation to item #2, I am not satisfied the Tenant is entitled to the cost of the report about mold in the rental unit as the Tenant chose to purchase the kit and pay for the company to analyze the samples she took. The Landlord is not responsible for the costs of doing so.

In relation to item #4, I am not satisfied based on the Tenant's testimony and letter from R.B. that the Tenant could not use the second bedroom. The Landlord took the position that the Tenant did use the second bedroom. The letter from the restoration company does not identify an issue with moisture levels in the second bedroom. I find there is insufficient evidence to show the Tenant could not use the second bedroom due to moisture issues.

In relation to item #5, I accept based on the Tenant's testimony and the witness statements that a few individuals chose not to visit the Tenant at the rental unit due to the smell of mold or dampness. As stated, I am not satisfied there was mold in the rental unit that affected the use of the rental unit. In the absence of further evidence, I am not satisfied a breach by the Landlord led to the individuals choosing not to attend the rental unit. Further, I would not have awarded the Tenant the compensation sought as it is not proportionate to the alleged loss.

In the circumstances, I am not satisfied the Tenant is entitled to the compensation sought. The Application is dismissed without leave to re-apply.

Conclusion

I am not satisfied the Tenant is entitled to the compensation sought. The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 13, 2019

Residential Tenancy Branch