# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPR, MNDL-S, MNRL-S, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55;
- a monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation (*the *Regulation)* or tenancy agreement, pursuant to section 67 of the *Act*;
- authorization to retain a portion of the tenant's security deposit for compensation for damage or loss under the Act and rent or utilities, pursuant section 67 of the Act; and
- authorization to recover the filing fee for this application, pursuant section 72 of the Act.

Although I left the teleconference hearing connection open until 1:51 P.M. to enable the tenant to call into this teleconference hearing scheduled for 1:30 P.M., the tenant did not attend this hearing. The landlord JT and his advocate WT attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

I accept the landlord's testimony that the tenant was served with the Notice of Hearing and evidence (the Materials) by registered mail on December 31, 2019, in accordance with section 89 of the Act. The registered mail tracking number is reproduced on the cover of this decision.

Section 90 of the Act provides that a document served in accordance with Section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find the tenant is deemed to have received the Materials on January 05, 2020.

Preliminary Issue – claims withdrawn

At the outset of the hearing the landlord affirmed the tenant paid all the rent in arrears, an order of possession was granted on January 13, 2019 and the tenant left the rental unit on February 05, 2020.

The landlord withdrew the claims for:

- an order for possession under a 10-Day Notice to End Tenancy for Unpaid Rent ("Ten-Day Notice ") pursuant to sections 46 and 55; and
- a monetary order for unpaid rent.

Issues to be Decided

- Is the landlord entitled to a monetary order for damages pursuant to section 67 of the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act* pursuant to section 72 of the Act*?*

Background and Evidence

While I have turned my mind to all the evidence provided by the attending party, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending party; it is his obligation to present the evidence to substantiate his application.

The landlord affirmed the tenancy started on March 16, 2004 and lasted until February 05, 2020. At the outset of the tenancy the landlord collected a security deposit of $950.00 and still holds it (with accrued interest, today the landlord holds $983.63). Monthly rent was $2,720.00, due on the first day of the month.

The landlord affirmed there was no move-in inspection when the tenancy started in March 2004 because there was no move-in inspection form at the time. A move-out inspection was scheduled for January 31, 2020 at 1:00 P.M. However, the tenant did not move out at that day. The landlord did not try to schedule a move-out inspection for another date. When the tenant moved out an inspection was conducted by the landlord without the tenant and the bailiff witnessed this inspection.

The landlord was informed by the tenant on July 08, 2019 that there was water leaking in the main floor of the kitchen originally from under the sink. The following day the landlord inspected the rental property, discovered mold on the walls and ceiling of the storage room under the kitchen, and made repairs. Photographs dated July 09 were provided showing extensive mold in the storage room.

On July 11 the landlord sprayed mold killer to the ceiling. On July 15 the tenant informed the landlord there was still a leak and the landlord conducted further repairs.

Between July 15 and August 12 there were multiple text messages between the landlord and the tenant about issues unrelated to damages. On August 13 the landlord texted the tenant:

> Let me to clarity (sic) the situation: on July 8 I go your message reporting the leaking in the kitchen. On July 9 I repaired the water pipe connection leak. On July 15, you reported the kitchen leaking again. This time it was the water stop valve under the sink leaking. I fiexed (sic) it on the same day. About the mold in the room under the kitchen, it has been developed for a long time by the leaking from the kitchen. **It is your negligence to report the leaking in a timely manner and hence causing damage to the room. I had sprayed the mild (sic) killer. Let it completly (sic) dry before any action to be taken**.

On August 20 the landlord conducted a new inspection and did further repairs. On August 21 the landlord discovered a new leak related to the dishwasher and conducted further repairs. On August 22 the landlord conducted another inspection and did not discover any further leak.

On September 22 the dry wall was repaired. Photographs dated October 06 were provided showing repairs in the storage room. The final painting and cleaning were completed on December 19.

The landlord also produced a document signed by the tenant on September stating repairs were conducted on August 20 and 21, and inspections were conducted on August 22 and September 03.

The landlord testified that he paid $2,814.00 for the repairs on December 31 and asked to receive this amount as compensation because the tenant failed to notify the landlord in a timely manner about the leaking and mold. A corrected invoice dated December 26 was provided as evidence. A monetary order worksheet (RTB form 37) was also provided as evidence.

The landlord testified the leak under the kitchen sink involved a small amount of water dripping and could be easily seen. The damage reported on July 08 was large and probably occurred over a long period of time. The tenant's delay notifying the landlord about this damage caused it to be worse. The landlord estimates if the damage had been reported when the leak started there would be no damage to the storage room. The tenant informed the landlord he does not go to the storage room often.

Analysis

Sections 7 of the Act states:

> 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.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. 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:
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> - 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 standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the facts occurred is on the person making the claim. Here, the landlord claims the tenant was negligent in failing to notify the landlord in a timely manner about water leaks and mold growth.

Residential Tenancy Branch Policy Guideline 01 states:

> The Landlord is responsible for ensuring that rental units and property, or

> manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park. The tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. The tenant is also generally required to pay for repairs where damages are caused, either deliberately or as a result of neglect, by the tenant or his or her guest. The tenant is not responsible for reasonable wear and tear to the rental unit or site (the premises), or for cleaning to bring the premises to a higher standard than that set out in the Residential Tenancy Act or Manufactured Home Park Tenancy Act (the Legislation).
>
> Reasonable wear and tear refers to natural deterioration that occurs due to aging and other natural forces, where the tenant has used the premises in a reasonable fashion. An arbitrator may determine whether or not repairs or maintenance are required due to reasonable wear and tear or due to deliberate damage or neglect by the tenant. An arbitrator may also determine whether or not the condition of premises meets reasonable health, cleanliness and sanitary standards, which are not necessarily the standards of the arbitrator, the landlord or the tenant.

The tenant informed the landlord he does not go to the storage room often. The landlord did not provide any documentary evidence or testimony of preventive inspections of the rental property. A useful guide in regard to inspection of rental properties is found in Boyes v. Wong (2016), BCSC 1085, which states:

> [204] Based on the expert evidence I find the standard of care owed by a landlord or property manager is to:
>
> 1. Conduct an initial thorough inspection of premises to ensure that the premises is safe and clean and to note any deficiencies;
>
> 2. Perform a detailed inspection of the property with every tenant prior to their moving in and moving out;
>
> 3. On an annual basis, the landlord should inspect the property and note any issues including preventative and deferred maintenance as well as life and health safety issues;
>
> 4. On receiving a complaint from a tenant, the landlord has an obligation to investigate the complaint;

The landlord failed to conduct preventive inspections in the rental property. Such inspections could have helped the landlord to discover the leak and mold at an earlier stage.

The requirement to conduct an inspection of the rental unit at the start of the tenancy became part of the Residential Tenancy Act in 2003, prior to the commencement of this tenancy.

Section 32 (3) of the Act states:

> 32 (1)A landlord must provide and maintain residential property in a state of decoration and repair that.
> […]
> (3)A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

The landlord is not aware of when the leak started and the mold started to develop. I find the landlord has not proven, on a balance of probabilities, that the negligence of the tenant caused the damage to the rental unit. The landlord has not proven the tenant knew about the leak and mold and failed to notify the landlord. Thus, there is no breach of the Act by the tenant.

Residential Tenancy Branch Policy Guideline 17 states:

> The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
> • a landlord's application to retain all or part of the security deposit; or
> • a tenant's application for the return of the deposit.
> unless the tenant's right to the return of the deposit has been extinguished under the Act14. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for dispute resolution for its return.

There is no information whether or not the landlord received the tenant's forwarding address. The landlord is cautioned to abide by Policy Guideline 17 and Section 38 of the Act.

As the landlord was not successful in his application he is not entitled to recover the filing fee.

Conclusion

I dismiss without leave to reapply all the landlord's claims.

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: March 03, 2020

Residential Tenancy Branch