



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNSD, FFT, MNDCT**

Introduction

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

- a monetary order for \$3,600 representing two times the amount of the security deposit pursuant to sections 38 and 62 of the Act;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,800 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 2:25 pm in order to enable the landlord to call into this teleconference hearing scheduled for 1:30 pm. Tenants CF, ED, EOK, and EOB attended the hearing. The tenants were also represented by counsel ("**NV**"). All 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 tenants, NV, and I were the only ones who had called into this teleconference.

NV stated that the tenants served the landlord via registered mail to an address where the landlord lived at the end of the tenancy with the notice of dispute resolution form on December 21, 2019 and amendment to their application and supporting evidence package on March 12, 2020. NV provided two Canada Post tracking number confirming these mailings which are reproduced on the cover of this decision. Tenant CF followed up with the landlord on January 2, 2020 confirming the landlord's address. CF noted that the landlord had not picked up the registered mailing yet. The landlord stated that she was "extremely busy".

On NV stated that, to date, the landlord had not retrieved either package sent by registered mail. NV stated that, out of an abundance of caution, she emailed the tenants' documentary evidence to the landlord on March 12, 2020.

I find that the landlord was deemed served with these packages on December 26, 2019 and March 17, 2020 respectively, five days after their respective mailings, in accordance with sections 88, 89, and 90 of the Act.

Preliminary Issue – Correcting the Spelling of Various Names

NV advised me that the tenants misspelled the landlord's surname. They mistakenly wrote it as ending in and "n", when, in fact, the correct spelling ends in an "m".

The tenants misspelled the surnames of EOK and EOB, neglecting to use an apostrophe.

I order that the spellings of the parties' names be corrected to their proper spellings, as listed on the cover of this decision.

Issues to be Decided

Are the tenants entitled to:

- 1) a monetary order of \$7,400; and
- 2) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into an oral tenancy agreement starting November 5, 2018. The tenants rented a five-bedroom basement suite. Each tenant occupied a single bedroom. The parties are all co-tenants on the same tenancy agreement. They moved in at the same time, paid their security deposit together, and frequently paid their monthly rent as a single lump sum. Monthly rent is \$3,800. The tenants paid a security deposit of \$1,800 to the landlord at the start of the tenancy, which the landlord still holds.

1. Security Deposit

The tenancy ended on October 31, 2019. CF testified that the tenants provided their forwarding address in writing (using RTB form 47) to the landlord in early November 2019, when they returned to the rental unit to do a move-out condition inspection. NV stated that the landlord never provided the tenants with a move-out condition inspection report (and never conducted a move-in inspection at the start of the tenancy). The tenants did not enter a copy of the RTB form used to provide their forwarding address to the landlord into evidence.

CF testified that, to date, the landlord has neither returned their security deposit, on applied to the RTB to retain the deposit.

2. The Flood

CF testified that, on December 13, 2018, his bedroom and ED's bedroom became flooded with water. He did not testify as to the cause. He testified that the tenants notified the landlords of the flooding, and the started redirecting the water into the bathroom, which had a floor drain. The landlord's husband ("**JP**") attended the rental unit with a dehumidifier and towels to finish the cleaning shortly thereafter.

CF testified that, as a result of the flood, his and ED's bedrooms had to be significantly renovated. The interior wall between them was knocked out. Drywall was removed and replaced. He testified that the renovations were not finished until January 10, 2020 for ED's room, and January 13, 2020 for his room.

He testified that following the flood he and ED slept on the couches in the shared area of the rental unit. He testified that a few days later, a room on the upper floor of the residential property became available, and he moved in there. However, after a few days, the landlord told he that she had re-rented that room to a new tenant, and that he would have to move again. He testified that he moved back downstairs (to stay on the couch) for a few days and was then offered another room in a property owned by the landlord.

CL testified he moved into that property for two days, but that it was filthy. He testified that it obviously had not been cleaned when the prior occupants left, and that the landlord asked him to clean it while he was there. He then testified that, while he was at work, the landlord entered the room where he was staying and removed many (but not all) of his possessions. She told him that she had re-rented the room where he was staying (again!), and that he would have to move a third time.

CF testified that he then moved in with the landlord and her husband and slept on a mattress on their floor. He testified that after a short period of time he decided to move back into the rental unit and sleep on the couch.

ED remained on the couch throughout the renovations to her room.

The landlord did not provide any rent reduction to the tenants during the time CF and ED's bedrooms were being repaired.

The tenants argued that such conduct amounts to loss of quiet enjoyment of the rental unit, and that the landlord was obligated to reduce the monthly rent for the time CF and ED were displaced. The tenants claim \$1,520 in compensation for CF and ED being displaced from their bedrooms for a month, and for the loss of full use of the common areas of the rental unit while CF and ED slept of the couches. This amount represents

40% of one month's rent. They arrived at this mount by dividing the monthly rent by five (representing each bedroom) and then multiplying by two (for each bedroom rendered unusable).

NV conceded that the CF and ED did still have use of the non-bedroom areas of the rental unit when the bedrooms were being renovated, but that all tenants were deprived of the full use of these areas during the renovations, as ED and (sometimes) CF were sleeping in them. As such, she argued, a reduction of 20% of the monthly rent per flooded bedroom is appropriate.

3. Black Mold

Tenant EOB discovered black mold in her bedroom on July 29, 2019. She testified that two of the walls behind her bed were moldy along the baseboards. The tenants submitted a photograph of the mold in which a not-insignificant amount of black mold can be seen.

EOB testified that she reported the mold to JP immediately. JP responded that, if she wanted, she could "spray it with tilex" to remove it. She testified that she did not do this, as she understood black mold to be very unhealthy and required professional remediation to clean properly. She testified that, based on the amount of mold, she believed the mold was in the walls of the bedroom itself.

EOB testified that JP attended the rental unit on August 1, 2019 and cleaned off the surface mold. She testified that JP told her he would speak to his insurance company and would tell her when it was safe for her to move back into her bedroom. EOB testified that JP never advised her when it would be safe to move back in, despite the fact she followed up with him and the landlord on two occasions. She submitted text messages to JP and the landlord dated August 7, 2019 and September 25, 2019 confirming this. They never provided a substantive answer.

EOB testified that the landlord offered to rent her a room in the upper unit of the residential property, but that it was two times the cost of EOB's share of the monthly rent, and that she could not afford it. EOB also testified that JP offered another rental property to all five tenants to move to but did not respond when EOB followed up. EOB slept on the couch from July 29 to October 31, 2019 (approximately three months), at which time the tenancy ended.

The landlord did not provide any rent reduction during the time EOB was displaced from her bedroom.

The tenants argue that the landlord failed to properly maintain the rental unit, and that this caused EOB to be deprived the use of her bedroom. The tenants claim \$2,280 (equal 60% of one month's rent) as compensation for this breach, calculated as 20% of the monthly rent for three months. The tenants take the position that, as with CF and

ED's situation, while EOB did still have use of the non-bedroom areas of the rental unit while her bedroom contained black mold, all the tenants were deprived of the full use of these areas during the renovations, as EOB was sleeping in them. As such a reduction of 20% of the monthly rent is appropriate.

Analysis

1. Security Deposit

Section 38(1) of the Act states:

Return of security deposit and pet damage deposit

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Based on the testimony of the tenants, I find that the tenancy ended on October 31, 2019. I accept CF's uncontroverted testimony that the tenants provided their forwarding address in writing to the landlord in early November 2019.

I find that the landlord has not returned the security deposit to the tenants within 15 days of receiving the tenants' forwarding address, or at all.

I find that the landlord has not made an application for dispute resolution claiming against the security deposit within 15 days of receiving the forwarding address from the tenants. Accordingly, I find that she has failed to comply with her obligations under section 38(1) of the Act.

Section 38(6) of the Act sets out what is to occur in the event that a landlord fails to return or claim the security deposit within the specified timeframe:

- (6) If a landlord does not comply with subsection (1), the landlord
 - (a) may not make a claim against the security deposit or any pet damage deposit, and
 - (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The language of section 38(6)(b) is mandatory. As the landlord has failed to comply with section 38(1), I must order that she pay the tenants double the amount of the security deposit (\$3,600).

2. The Flood

Section 28 of the Act states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

[...]

(b) freedom from unreasonable disturbance;

Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

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.

Residential Tenancy 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:

- 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 “**Four-Part Test**”)

So, the tenants must prove, on a balance of probabilities, that the landlord breached the Act by depriving the tenants of their entitlement to quiet enjoyment of the rental unit or by failing to maintain the rental unit in a condition suitable for occupation, that they

suffered a quantifiable loss as a result of these breaches, and that they acted reasonably to minimize their loss.

I accept CF's and EOB's uncontroverted evidence in its entirety.

I find that the CF and ED were deprived of use of their bedrooms for approximately one month. I find that, during this time, ED slept on a couch in the rental unit, and that the landlord shuttled CF around between the multiple residences by the landlord, before CF elected to sleep on a couch in the rental unit as well. I accept that the landlord did not reduce the tenants' monthly rent during this time.

Policy Guideline 6 defines a breach of quiet enjoyment:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

I find that that the flood caused CF and EOB to not be able to use their bedrooms for one month. I find that this represents an interference with their abilities to use and enjoy the rental unit. Additionally, I find that by gutting both bedrooms, the landlord failed to provide the tenants with a rental unit suitable for habitation during the time of the renovation. As such, I find that the landlord breached sections 28 and 32 of the Act.

I accept the tenants' method of calculating their monetary loss. I find that a 20% reduction of monthly rent per room rendered uninhabitable by the flood is reasonable, as two of the tenants were deprived of use a substantial portion of the rental unit, and all the tenants lost the full use of the non-bedroom areas of the rental unit.

I find that the tenants acted reasonably to minimize their damages. Indeed, I find that the requests made of CF by the landlord to constantly move between residences are entirely *unreasonable*, and that, despite this, CF complied with them.

I order the landlord to pay the tenants \$1,520.

3. Black Mold

I find that the landlord breached the Act by failing to adequately remediate the black mold in EOB's bedroom. I accept EOB's testimony that, on the same day he cleaned the surface mold from the walls, JP told her that he would tell her when she could move back into her bedroom. This implies that JP understood that a surface cleaning was insufficient to remediate the black mold.

I find that EOB attempted on two occasion to see if she could move back into her bedroom but was not given a definitive answer. As such, I accept that EOB acted reasonably by not moving back into her bedroom after the surface mold was removed.

I find that, for the same reasons as with CF and ED's loss of use of their bedrooms, the tenants are entitled to compensation in the amount of 20% per month EOB was unable to use her bedroom (three months). As such, I order the landlord to pay the tenants \$2,280.

4. Filing Fee

Pursuant to section 72(1) of the Act, as the tenants have been successful in the application, they may recover their filing fee from the landlord.

Conclusion

Pursuant to sections 62, 65, 67, and 72 of the Act, I order that the landlord pay the tenants \$7,500, representing the following:

Double the deposit	\$3,600.00
Flood rent reduction	\$1,520.00
Black Mold rent reduction	\$2,280.00
Filing fee	\$100.00
Total	\$7,500.00

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: May 20, 2020

Residential Tenancy Branch