



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, FFL

Introduction

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

- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- a monetary order for damage to the rental unit in the amount of \$1,942.50 pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The landlord was represented at the hearing by its owner ("**CN**") and an agent who is also CN's husband ("**BL**"). The tenants' lawyer ("**RA**") attended the hearing on behalf of the tenants. All were given a full opportunity to be heard, to present affirmed testimony (in the case of CN and BL), to make submissions, and to call witnesses.

CN testified, and RA confirmed, that the landlord served the tenants with the notice of dispute resolution form and supporting evidence package. RA stated, and CN confirmed, that the tenants served the landlord with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

Issues to be Decided

Is the landlord entitled to:

- 1) a monetary order for \$1,942.50;
- 2) recover its filing fee;
- 3) retain the security deposit in partial satisfaction of the monetary order made?

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 a written, month to month tenancy agreement starting December 16, 2018. Monthly rent was \$3,200 and was payable on the first of each month. The tenants paid the landlord a security deposit of \$1,600, which the landlord continues to hold in trust for the tenant.

The tenants vacated the rental unit on February 20, 2020, in accordance with a one month notice to end tenancy (which they did not dispute through the Residential Tenancy Branch). The tenants provided their forwarding address to the landlord on March 5, 2020.

The landlord claims \$1,942.50 in damages, representing the cost to assess and remediate mold damage to parts of the rental unit as follows:

Leak assessment	\$262.50
Mold assessment and remediation	\$1,680.00
Total	\$1,942.50

Landlord's Position

CN testified that, on December 2, 2019, the tenants, via text message, notified BL (who was acting on behalf of the landlord) about moisture in the upstairs master bedroom. They speculated that it might have been caused by a leak in the roof. The landlord retained a contractor (the “**contractor**”) who attended the rental unit with BL on December 4, 2019.

CN testified that upon attending the rental unit, BL discovered that three bedrooms on the upper floor were occupied by students who were not members of the tenants’ family. BL noted that the doors to all three rooms were kept closed. CN testified that neither she nor BL was aware that the tenants allowed students to stay with them.

BL and the contractor entered each of the bedrooms and discovered that there was dark mold on the ceiling and wall of the master bedroom. BL testified that the master bedroom felt very damp. BL stated that the tenants did not advise him that there was any mold in the master bedroom prior to his attending the rental unit. Prior to departing, BL told the tenants to turn up the heat in the rental unit to reduce the moisture.

Before the contractor could conduct an inspection for leaks in the roof, he needed to determine if there was any asbestos in the moldy areas. The contractor returned on December 5, 2020, to conduct this testing, and determined that there was no asbestos.

On December 10, 2020, a furnace maintenance specialist (the “**specialist**”) attended the rental unit to assess the furnace and an airflow issue. BL testified that the specialist advised him over the phone that certain vents upstairs were either blocked by personal effects of the students or were simply closed and that he cleared the blocked vents and

opened the closed vents. BL testified that the specialist gave the tenants instructions as to how to maintain good airflow upstairs. The specialist also advised BL that the furnace was an older model and suggested that BL upgrade to a more efficient model.

The contractor returned to the rental unit on December 20, 2019, conducted an investigation, and concluded that there were no leaks in the roof, and that the mold was the result of poor ventilation in the master bedroom. The contractor charged the landlord \$262.50 for this investigation. The landlord submitted into evidence a copy of an invoice from the contractor corroborating this amount. On the invoice, the contractor wrote:

Upon inspection we concluded there is no roof leak. The mould in the bedroom is related to a lack of ventilation in the room and due to keeping the temperature low, creating a good medium for mould to grow

BL testified that the contractor advised him that the thermostat (which was located upstairs) was set to between 16 to 18 degrees, and that it should have been set to the low 20s. BL testified that he conveyed this information to the tenants on December 4, 2019.

On January 7, 2020, a remediation company hired by the landlord attend the rental unit to remove the remediate the mold. The landlord submitted an invoice for \$1,680 for the “assessment” and “remediation” of the mold in the master bedroom.

CN argued that the mold was caused by the negligence of the tenants, specifically the students practice of having their doors closed at all times, the blocking of the vents, and the failure to set the thermostat to a sufficiently warm temperature. As such, she argued that the landlord is entitled to recover the contractor’s fee and the remediation company’s fee from the tenants.

Tenants’ Position

The tenants provided a written statement in advance of the hearing, which RA referred to while making submissions. In the statement, they generally confirm the timeline as set out by the landlord but alleged that the contractor and BL attended the rental unit on December 3, 2019 and that the contractor conducted the asbestos testing on December 4, 2019 (as opposed to December 4 and 5, respectively).

The tenants wrote that the landlord knew the students were living in the rental unit. Additionally, they wrote that they did not know that there was mold in the master bedroom, as the student had described it to them as “dirt”.

The tenants wrote that, on December 10, 2020, the specialist attended the rental unit to inspect the furnace and advised tenant LM that:

the furnace is an old model, was too loud (indicating mechanical problem) not properly maintained, and vent screen were too old. He also recommends buying new vents screen. There could be rodents that causes bad smell coming out from the supply air vents and preventing proper air circulation.

The tenants wrote that, on December 20, 2019:

Two men came to the house, one of them was [the contractor]. The other guy inspected the ceiling and wall in the master's bedroom. He told me that it was leak but [the contractor] insisted it was moisture for not heating up and ventilating the house well. [The contractor] checked the thermostat. At that time, it was set at 19 and he turned it up to 19.5. The house temperature at that time was at 21 so it was not cold. The thermostat was not manual but programmable digital kind. (Please note, there was a space heater placed in the master's bedroom since [BL] and [the contractor] inspected it on December 3, 2019) but [the contractor] still insisted that it was moisture and not heating up the house properly even the guy who was with him did not agree. He went outside and took his ladder from his service vehicle. [The contractor] followed him and told me that the work was done and I could now lock the front door. I run at the back of the house to check if they were there. I saw the guy climbing up his ladder. I went inside and could hear noises in the roof. I do not know if they did work or fix it but after a few days, we noticed the molds has stop spreading.

RA denied that the tenants acted negligently to cause the mold. He argued that the landlord has failed to discharge its evidentiary burden to prove that the mold was caused by the neglect of the tenants or the students, that it was not caused by an inadequate furnace, or that the students had covered the vents in the master bedroom. He denied that the tenants kept the temperature of the rental unit at such a level that would have caused the mold to grow.

Analysis

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**”)

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(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.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

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 their case is on the person making the claim. In most circumstances this is the person making the application.

So, the landlord must prove that it is more likely than not that the tenant fail to repair damage which they caused by their (or the student's) neglect, and that such damage is not reasonable wear and tear.

The parties have presented very little in the way of documentary evidence to assist me in determining the cause of the mold. Multiple professionals (the contractor, the specialist, and the remediators) have attended the rental unit, but I do not have any statements, correspondence, or reports from any of them as to the cause of the mold damage, aside from a single sentence on the contractor's invoice which attributes the cause of the mold to “a lack of ventilation in the room and due to keeping the temperature low.”

On the documentary evidence before me, I cannot say what the cause of the lack of ventilation is, or why the temperature was kept so low. The tenants deny that the students blocked the vents. The landlord alleged that they did, and that specialist told BL that he cleared them on December 10, 2020. I do not have any evidence from the specialist that would corroborate the landlord's position (a photograph or written statement, for example). Such evidence should have been relatively easy for the landlord to obtain. As such, I find that the landlord has failed to prove that the vents were blocked.

The tenants argued that the poor airflow, lack of ventilation, and low temperature may be caused by an inadequate furnace, as opposed to vents being blocked or doors being closed. The landlord's own evidence indicates that the furnace was old and in need of replacing.

Again, there is a dearth of information about the performance of the furnace. A statement or inspection record from the specialist would have been of great assistance in resolving this question. Without it, I am left to rely on the parties' testimony and written statements to determine its quality. Based on the landlord's evidence, I find that the furnace was old, and of an age where it would not be unreasonable to replace it.

Upon consideration of the documentary evidence before me, and the statements and testimony of the parties, I find that the landlord has failed to prove that, on a balance of probabilities, that the tenants (or the students) acted negligently and in a manner that caused the mold in the master bedroom. There is little in the way of tangible evidence (statements from those professionals who attended the rental unit on mold-related issues, for example) supporting the landlord's claim. This evidentiary deficit makes it difficult for them to prove their case.

It is *possible* that the student's practice of keeping the doors to the bedrooms shut and blocking the vents (which the landlord has not proved) caused the mold. It is also possible it was due to an inadequate furnace or some other factor not considered. However, the *possibility* of the tenants causing the conditions leading to the mold is not sufficient to warrant a monetary order in favour of the landlord. Rather, the landlord must show that such a thing is *probable*. And on the evidence before me, I cannot find this to be the case.

As such, I dismiss the landlord's application.

I order that the landlord return the security deposit to the tenants in accordance with the Act.

Conclusion

I dismiss the landlord's application, in its entirety, without leave to reapply.

Pursuant to section 65 of the Act, I order that the landlord pay the tenants \$1,600, representing the return of the security deposit.

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: August 7, 2020

Residential Tenancy Branch