



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, RP, ERP, OLC, MNDCT, FFT

The tenants filed an Application for Dispute Resolution (the “Application”) on April 17, 2021, and an amended Application on May 14, 2021:

- to dispute a One Month Notice to End Tenancy for cause;
- to ensure the landlord’s compliance with the legislation and/or the tenancy agreement;
- for repairs to the rental unit, after contacting the landlord to do so;
- for emergency repairs for health or safety reasons, after contacting the landlord;
- for compensation for monetary loss or other money owed;
- for payback for the cost of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 23, 2021. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The tenants stated that they delivered notice of this hearing to the landlords. This, including their prepared documentary evidence, was either in person or through registered mail. They gave proof of this in the form of video showing drop off, and Canada Post mail tracking information. The landlords confirmed they received the documentary evidence of the tenants.

The landlords stated that the tenants did not provide a forwarding postal address to them at the end of the tenancy. This left email only, so the landlord forwarded their evidence material to the tenants by this means. In the hearing, the landlord located their email information as proof, and gave the precise date and time that their evidence was delivered to the tenants. This was on August 12, which is 11 days in advance of the hearing. In the hearing, the tenants stated they did not receive these materials from the landlord.

Because of this discrepancy, I advised the parties that an adjournment may be necessary to ensure fair and proper exchange of evidence. On any relevant piece, I would decide whether

the tenant needed opportunity to review that specific piece, requiring a separate disclosure process. My particular consideration of this is set out in the body of the decision below.

Preliminary Matter

At the outset, the tenants disclosed that they moved out from the rental unit on June 4, 2021. The tenancy ended on that date.

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues.

Because the tenancy ended, I find the issue of the validity of the landlord's notice to end tenancy is unrelated, and does not need to be resolved. Additionally, the tenants' plea for repairs to the rental unit is a moot point, meaning it is no longer a matter of importance. I advised the parties I would consider submitted material on the need for repairs in relation to the tenants' claim for monetary relief due to a lack of repair affecting the tenancy. Other than this, the need for an order compelling landlord repairs to the rental unit, and their compliance with the legislation and/or agreement, is not necessary after the end of the tenancy. I find these issues are unrelated and I amend the tenants' Application to exclude these matters. They are dismissed without leave to reapply.

Issues to be Decided

Are the tenants entitled to compensation for monetary loss or other money owed, pursuant to s. 67 of the *Act*?

Are the tenants entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

In their evidence, the tenants presented a copy of the tenancy agreement. This shows the parties signing the agreement on January 10, 2021, after the tenancy started on August 15, 2020.

The agreement shows that the required rent amount was \$1,300 monthly. The tenants stated they paid this amount over two payments per month. The landlords provided that, even though the agreement showed that laundry was *not* included in the rent, they reduced the rent amount by \$1,250 when the tenants queried this point. The tenants confirmed this rent reduction for this reason.

Both parties agreed that the tenancy ended on June 4, 2021. Both parties also agreed that the landlord returned the full payment of the security deposit -- \$650 -- to the tenants in due course. Though this amount formed part of the tenants' original claim for monetary compensation, since the time they filed the Application they moved out and the landlords returned the security deposit to them.

When the tenants amended their Application on May 14, 2021, they added a monetary claim for \$4,550. This includes: the equivalent of 3 months' rent at \$1,250 per month, totalling \$3,750; the amount of the \$650 (now returned) security deposit; and the \$100 Application filing fee. On their amendment form, the tenants provided the following points:

- they were subject to a ceiling leak from the upstairs bathroom (i.e., that of the landlord), for three months;
- the landlord refused to fix it properly, with "plenty of time to repair properly"
- they had to move out from the bedroom, this "due to continuous drywall cleanup and moldy smell"
- the tenancy agreement specifies the landlords' commitment to repairs for health and safety reasons.

In their submitted evidence, the tenant provided a document they submitted as part of their response to the landlord's notice to end the tenancy. This gives the history of the matter at hand concerning the ceiling and leaking.

In the hearing, the tenants provided more information that they identified the issue of water through the bedroom ceiling, precisely on March 9, 2021. They had notified the landlord and asked that they look into it. After this, "screws started popping out and the landlord said they

would fix it.” There was a set day for the landlord to make the repairs on March 26 when the tenants were away from the unit. The landlord had only painted over the water stains instead of making a proper repair.

After this repair, the landlord obtained the service of a building inspector. According to the tenants in their written account, the inspector “didn’t inspect it properly.” After, that individual inspector did not respond to calls directly from the tenants, even blocking one of their contact phone numbers. The completed report was not disclosed to them, though the tenants admitted that they spoke with the inspector directly on that day, who informed them that “nothing was wrong.”

The tenants then notified the landlord of inadequate repairs on March 31, 2021. They requested that the landlord “repair the ceiling proper, which means taking the roof down, getting a proper health inspector in (to assess the smell) to repair it properly.” They set the time of 6pm on April 14 for the landlord to complete the repair.

After this, the tenants retained the services of another inspector who made an investigation on April 15, 2021. That inspector’s report of that same date was provided by the tenants in their evidence. This sets out the findings of the inspector, that the master bedroom shows the presence of water damage. More specifically:

The ceiling was found to be dry at the time of inspection and no mould growth can be seen. . .

The presence of moisture was found via infrared thermography and confirmed via moisture detecting device. . .It must be recommended that baseboards, drywall and flooring is removed from areas where moisture is still present, to prevent mould growth and odours associated with water damage, from affecting the home.

It was reported that a musty odour is present in the master bedroom, when windows are left closed. As our date of inspection was long after the date of loss and no apparent water damage mitigation has been completed, it is possible that mould growth is already present.

The tenants additionally submitted a Monetary Order Worksheet dated May 13, 2021. This shows the amount of \$2,800 for an “estimate from restoration company.” This is the amount based on their hired inspector making the repair estimate of \$1,800, and an “Emergency Estimate/Reserve” of \$1,000.

The inspector who completed the report attended the hearing at the request of the tenants. They provided direct testimony on their account. In contrast to the inspector hired by the landlord, their assessment was based on their utilization of more sophisticated and updated technology. They stated: “it was obvious that the ceiling had been damaged” and they “often find things that other inspectors don’t.” They also confirmed there was no visible mould but the only way to confirm would be a removal of the drywall and baseboards. They noted a three-to-seven-day threshold for the development of mould in these types of situations.

The tenant also provided photos showing drywall portions and dust that had dropped from the bedroom ceiling. There were also images of the ceiling damage caused by moisture.

In the hearing, the tenant specified that their health was affected by the moisture. This was “sinus issues, headaches and coughs.” They did mention this to the landlord after their day away from the unit on March 26. They visited the doctor multiple times. Though the doctor could not say specifically that these symptoms were attributable to mould, after the tenants’ moveout from the unit, they symptoms abated at the doctor stated more categorically that mould was what caused the noted symptoms.

The landlords responded to this testimony and evidence in the hearing. They reiterated that there is no proof of mould actually causing a problem for the tenants here, and “if the tenants showed [the landlord] any text message or video [of water leaking], [they] would pay them anything they want.” They looked to their own initial inspector’s statements – stated directly to the tenants at the time of the visit – to say there was no water leak, and no moisture present or mould at the time of that visit on April 6, 2021. After this, the inspector hired by the tenants found moisture; however, this was only via infrared technology.

More specific to the tenants’ claims, the landlord observed that there was no positive identification of mould as being the source of the tenants’ claimed illness. Additionally, they explained the rental unit house was brand new in March 2020, with the tenants moving in a short time later.

More generally, the landlords claimed the tenants would raise issues of concern to the landlord on a regular basis. One example of this was the tenants’ claim that the landlords’ own cooking caused a health concern, prompting a hospital visit.

Analysis

Under the *Act* s. 7, a party who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. Additionally, the party who claims compensation must do whatever is reasonable to minimize the damage or loss. Pursuant to s. 67 of the *Act*, I shall determine the amount of compensation that is due, and order that the responsible party pay compensation to the other party if I determine that the claim is valid.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. that a damage or loss exists;
2. that the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. the value of the damage or loss; and
4. steps taken, if any, to mitigate the damage or loss.

The *Act* s. 32 sets out the landlords' obligation to maintain residential property:

in a state of . . . 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.

Overall, I find the evidence clearly shows the landlord was responsive to the tenants' complaint of ceiling damage caused by water. I conclude this in itself shows the landlord was compliant with requirements as per s. 32 of the *Act*. The issues raised by the tenants here address the sufficiency of the landlords' measures, and whether the measures were enough to alleviate serious issues leading to health issues, and full use of the rental unit.

While the tenants have shown that there was damage to the ceiling requiring repair – even after March 26 – I find they have not presented sufficient evidence to show precisely how it affected them. In the hearing the tenants made statements that the presence of moisture was having ill effects; however, this is a serious matter that is not verified independently, with no information such as a doctor report present in the evidence. The tenants did not present it caused absence from work or other impacts in their daily lives. This makes it difficult to conclude that true damage or loss existed, as opposed to inconvenience caused by a small amount of material falling from the ceiling.

I am not satisfied the tenants were fully without use of the master bedroom which was the source of the difficulty. There was no evidence in the form of photos showing they had to remove all belongings or make do in another area of the rental unit. With the claim for a reimbursement of three full months' rent, I find this is the standard of evidence which the tenants must attain. They have not; therefore, the true impact to their lives is not established.

I am not satisfied a threat to the tenants' health existed. The tenants were obviously not satisfied with the findings of the inspector hired by the landlord, stated to them verbally on April 6. Beyond this, I find the report of the inspector they hired did not prove conclusively – with proven evidence – that there was a level of moisture present that proved to be a threat. I find the report categorically rules out the presence of mould, merely pointing to the possibility of growth. I find this is not sufficient evidence to show the water leak or water mark present in the bedroom because of the ceiling was causing the ill effects that the tenants described.

To apply a stricter standard, while the tenants have claimed for three months' full rent, this would normally assume that the tenants were entirely without use of the whole of the rental unit which is not the case here. As above, I find the tenants did not prove they were without use of the bedroom because of this problem. At best this would have entitled the tenants to some amount of compensation as a portion of the monthly rent; however, the tenants have not shown that their full use of the rental unit was interrupted or otherwise put on hold. Nor have they shown even a portion thereof. Without this evidence, the value of the damage or loss is not proven. In line with this, I find claiming a full amount of monthly rent for a problem allegedly affecting a discrete area of the rental unit does not represent an effort at mitigation.

In sum, the tenants have not proven that a problem existed to the extent claimed. I am not satisfied that damage or loss existed; nor am I satisfied that it stems from any breach by the landlord. As presented by the landlord in the hearing, I find the tenants did not present tangible evidence of a leak or a harmful level of moisture within the unit.

Based on these reasons, I dismiss the tenants' claim in its entirety, without leave to reapply.

The tenants enclosed a Monetary Order worksheet dated May 13. This shows the \$2,800 estimate from the inspector they hired. I deduce from what the tenants presented that this is an estimate for restoration from the investigator; I find it is not an estimate from an actual restoration company. The tenants made no specific presentation of this amount in the hearing and there is no amount for this listed in their amendment to their original Application. I find the tenants are not entitled to this amount, with no record that they ever paid for this amount.

Because the tenants' claim is dismissed, I find they are not entitled to compensation of the Application filing fee.

Conclusion

I dismiss the tenants' claim in its entirety, without leave to reapply. There is no monetary order awarded to the tenants here.

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

Dated: August 24, 2021

Residential Tenancy Branch