



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT

Introduction

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

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent, pursuant to section 46; and
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email addresses for service of this decision and order.

Both parties agree that the tenant served the landlord with this application for dispute resolution and evidence via email in May of 2021. I find that the landlord was sufficiently served, for the purposes of this *Act* with the above documents, pursuant to section 71 of the *Act* because the landlord confirmed receipt of the above documents.

Preliminary Issue- Amendment

The tenant's application for dispute resolution listed two addresses for the subject rental property. The tenant testified that she did not know which one is the correct legal

address. The landlord testified to the correct legal address. Pursuant to section 64 of the *Act* I amend the tenant's application to only state the address confirmed by the landlord as the correct legal address.

Preliminary Issue- 10 Day Notice to End Tenancy for Unpaid Rent

Both parties agree that this tenancy has already ended. I therefore dismiss the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid rent (the "10 Day Notice") as the issue is no longer relevant.

Section 55(1) and section 55(1.1) of the *Act* state:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Upon review of the 10 Day Notice I find that it conforms to the form and content requirements of the *Act*. Since the tenant's application was dismissed and the 10 Day Notice complies with section 52 of the *Act*, pursuant to section 55(1.1) of the *Act*, I must grant the landlord a monetary award for any unpaid rent.

Issue to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to a Monetary Order for unpaid rent, pursuant to sections 55.1 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on or around February 1, 2020. Monthly rent in the amount of \$1,750.00 was payable on the first day of each month. A security deposit of \$1,050.00 was paid by the tenant to the landlord.

The tenant testified that she moved out on June 4, 2021. The landlord testified that the tenant did not inform him when she moved out.

The tenant testified that she is seeking \$2,100.00 in damages because lots of her personal belongings were damaged by mold that the landlord refused to clean and she had to move out earlier than she wanted because of the mold. The tenant testified that her claim is a ballpark of the losses from items lost to mold and time spent cleaning moldy possessions. The tenant later testified that she is claiming \$2,100.00 because that equals 10% of her rent over the course of one year (12 months). The tenant testified that she thought a claim of 10% of her rent for 12 months would make her feel better. The tenant testified that she did some research and in another claim 10% of rent was awarded as damages. No caselaw or other jurisprudence was entered into evidence. No receipts or estimate for items damaged by mold were entered into evidence.

The tenant testified that she first noticed mold in the front room of the subject rental property on January 11, 2021. The tenant testified that the front room is an un-insulated coat room at the front of the property. The tenant testified that she saw mold on some of her shoes and coats and up the wall. The tenant testified that on January 11, 2021 she informed the landlord of same. The landlord did not dispute the above testimony.

The tenant testified that the landlord was dismissive and told her she was probably packing things in that area too tightly and this was causing the mold. The tenant testified that in February 2021 the landlord brought her a dehumidifier but this did not stop the mold growth and she had to remove her possessions from the front room.

The tenant testified that later in February she found mould under her bed and along the baseboards. The tenant testified that on March 1, 2021 she found more mold under her son's bed. Photographs of same were entered into evidence. The tenant testified that at this point in time the landlord agreed to have a professional assess the mold situation. The tenant testified that professionals attended at the subject rental property in March 2021. The tenant testified that the landlord informed her that the company only provided a quote for cleaning and not remedying the problem, and that he wanted the problem fixed, not just a clean up job. The landlord agreed to the above.

The tenant testified that the landlord later told her that the cost of fixing the problem was too high and that he was going to have to demolish the building. The tenant testified that the landlord told her that she would have to move out at the end of her lease, that being at the end of April 2021 but that she was permitted to stay until the end of May 2021 as long as she paid rent. The landlord agreed to the above testimony.

The landlord testified that he never actually intended on demolishing the unit but he told the tenant that because he thought that she might not move out at the end of the lease and he wanted her to move out because she caused the mold problem. The landlord testified that the mold inspectors told him that the mold problem was from the tenant's tropical plants that covered the subject rental property. The landlord did not enter any report from the mold inspector or any documentary evidence whatsoever. The landlord testified that after the tenant moved out the lower six inches of the drywall all had to be removed and the moisture barrier was properly installed and functional, which confirmed the mold inspectors' findings that the tenant's plants caused the mold.

The tenant testified that she only had two large tropical plants and that they did not cover the unit. The tenant denied being responsible for the mold problem.

The tenant testified that a previous tenant told her that mold was a problem in the unit and that the landlord knew about the mold problem prior to her moving in. No signed statements to support the above testimony were entered into evidence. The landlord testified that he was not aware of mold in the unit at the start of this tenancy.

Both parties agree that the landlord emailed the tenant the 10 Day Notice on May 5, 2021. The tenant testified that she received the 10 Day Notice dated May 5, 2021 on May 5, 2021. The 10 Day Notice was entered into evidence and states that the tenant failed to pay rent in the amount of \$1,750.00 that was due on May 1, 2021.

Both parties agree that the tenant did not pay the landlord rent for May 2021 or the first four days of June 2021.

Analysis

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the applicant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The tenant testified that her claim is a ballpark of her loss from items damaged by mold and time spent cleaning items affected by mold. The tenant later testified that her claim is for 10% of rent for 12 months of rent, dating back before the tenant was aware of the

mold problem. I find that the tenant is not entitled to compensation for mold in the subject rental property for the months before the tenant was aware of any mold.

The tenant did not enter into evidence any receipts for items damaged by mould and did not provide a record of time spent cleaning mold. The tenant did not provide any jurisprudence for her claim of 10% of her rent and did not provide any testimony as to why her loss is equal to 10%. I find that the tenant has not proved the value of the loss allegedly suffered. I find that a “ballpark” is not proof of the loss suffered, but an estimate, which, in this case, is does not appear to be based on anything other than what would make the tenant feel better.

Residential Tenancy Policy Guideline 16 states that nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right. I find that while the tenant has not proved the value of her loss, I find that the tenant has proved that she suffered a loss and the landlord breached a legal right held by the tenant.

Based on the photographs entered into evidence, I find that the subject rental property had a substantial mold problem. Based on the evidence of both parties, I find that the landlord refused to deal with the mold problem until after the tenant moved out.

Section 32(1) of the *Act* 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.

I find that in not dealing with the mold at the subject rental property from January 11, 2021 to the end of the tenancy, the landlord breached section 32(1) of the *Act*. Both parties agree that the mold was originally found in the front coat room, which is not insulated. I find that tropical plants located inside the house, which would not survive in an unheated room in the winter in the city in question, would not have caused the front room to have mold. I accept the testimony of the tenant that she only had two tropical plants. Given that there were mold issues throughout the house and the tropical plants were not in every room, I find, on a balance of probabilities, that the tenant’s plants did not cause the mold at the subject rental property.

I find that the tenant is entitled to nominal damages totalling \$1,000.00 for the loss of value of the tenancy due to mold, pursuant to section 65 of the *Act*.

Section 55(1) and section 55(1.1) of the *Act* state

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 46 [*landlord's notice: non-payment of rent*], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

Section 26(1) of the *Act* states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*. Pursuant to section 26(1) of the *Act*, I find that the tenant was obligated to pay the monthly rent in the amount of \$1,750 on the first day of each month. Based on the testimony of both parties I find that the tenant did not pay rent in accordance with section 26(1) of the *Act* and owes the landlord \$1,750.00 in unpaid rent for May 2021 and pro rated rent pursuant to the following calculation for June 2021:

$$\text{\$1,750.00 (rent) / 30 (days in June) = \$58.33 (daily rate) * 4 (days tenant resided in subject rental property) = \$233.32}$$

As stated above, in accordance with section 55(1.1) of the *Act*, since the tenant's application to cancel the 10 Day Notice was dismissed and the 10 Day Notice complies with section 52 of the *Act*, the landlord is entitled to a monetary award for unpaid rent totalling \$1,983.32.

The landlord's award of \$1,983.32 less the tenant's award of nominal damages in the amount of \$1,000.00 equals \$983.32 owed by the tenant.

Section 72(2) of the *Act* states that if the director orders a tenant to make a payment to the landlord, the amount may be deducted from any security deposit due to the tenant. I find that the landlord is entitled to retain \$983.32 from the tenant's security deposit. I order the landlord to return the remaining \$66.68 to the tenant.

Conclusion

I issue a Monetary Order to the tenant in the amount of \$66.68.

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 14, 2021

Residential Tenancy Branch