



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenants served the landlords with the notice of hearing package via Canada Post Registered Mail. Both parties also confirmed the tenants served the landlord with their submitted documentary evidence via Canada Post Registered Mail on September 29, 2021. Both parties confirmed the landlords served the tenants with their submitted documentary evidence via Canada Post Registered Mail on October 1, 2021. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for compensation and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on March 1, 2021 on a fixed term tenancy ending on July 31, 2021 as per the submitted copy of the signed tenancy agreement dated February 27, 2021. The monthly rent was \$1,450.00 payable on the 1st day of each month. A security deposit of \$725.00 was paid.

The tenants seek a monetary claim of \$3,399.88 which consists of:

\$3,299.88	Compensation,	
	\$2,800.00	New Mattress
	\$28.00	Dispose mouldy mattress
	\$271.88	Loss of Use, Main Bedroom, 3 weeks
	\$150.00	Loss of Boots
	\$50.00	Loss of shoes
\$100.00	Filing Fee	

The tenants provided written details which states in part,

We found mould along the entire west and south wall of the main bedroom, along with the close on the south wall. Everything against both of those walls, and everything near the floor in the close was mouldy. We had to throw away our king size mattress and box springs, 2 pairs of shoes, and some backpacks and handbags. We also lost the use of the main bedroom for 3 weeks. We have no idea how the mould go there. We noticed that both lower walls were damp, and the floor under our bed was damp.

[reproduced as written]

The tenants stated that they discovered mold on their mattress, box springs, 1 pair of shoes, 1 pair of boots and along two walls in the main bedroom. The tenants stated that the mold was first discovered by the tenants on June 24, 2021 and reported to the landlords on June 27, 2021. The tenants stated that the landlords attended and inspected the rental unit on June 27, 2021. The tenants stated that they have no idea

on the source of the mold. The tenants clarified that the mold was likely caused by the landlords' rental unit as they are clean people who take care of their belongings.

The landlord disputed the tenants claim arguing that the building was newly built in 2018 and that prior tenant had just vacated it without any issues reported. The landlords stated that the rental unit was provided to the tenants in a very clean condition and vacant at the start of their tenancy. The landlords stated that a completed condition inspection report for the move-in was made by both parties and shows no issues. The landlords argued that there are no signs of water ingress and the likely cause of the moisture causing the mold is from the tenant's own vaporiser and proper storage or their items. The landlord stated that the tenants control their own temperature in the rental unit.

The tenants disputed the landlords stating that they do not possess a vaporizer, but instead have a sleep apnia machine. The tenants argued that they did not have any previous mold issues in their last rental and since moving have not had any other issues.

The tenants re-argued that the mold was along two of the walls in the main bedroom and that there was 1-2 weeks of rainfall prior to noticing the mold. The tenants have referred to several submitted photographs in which they claim are items such as the mattress, box springs and shoes that had mold on them. The tenants also stated that mold was also present inside the closet as shown in submitted photographs.

The landlords confirmed that there is some surface mold on some items and noted that in May 2021 there was only $\frac{3}{4}$ inch recorded of rain and only 1 $\frac{1}{2}$ inches of rain in June 2021 as shown in the landlord's submitted evidence documents. The landlord also re-argued that the tenants' rental unit bedroom is behind a 10 inch concrete wall foundation; interior framed and insulated with a vapor barrier. The landlord stated it is highly unlikely that there is any water ingress through this that would also have to bypass an exterior perimeter drain. The landlord argues that the mold is more likely due to the tenants housekeeping practices. The landlord argued that the tenants made no effort to cleaning the surface mold. The landlord also argued that the tenants' monetary claim is without merit or foundation. The landlord stated that the mattress claim alone is not of similar class and disputes that the tenants have failed to provide any evidence to support that.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the affirmed testimony of both parties and find on a balance of probabilities that the tenants have failed to establish their claim. Despite both parties confirming that there is “some” mold in the rental unit, neither party has been able to provide sufficient evidence on the cause of the mold.

Mold will grow in places with a lot of moisture, such as around leaks in roofs, windows or pipes, or where there has been flooding. Mold grows on paper products, cardboard, ceiling tiles and wood products. Mold also can grow in dust, paints, wallpaper, insulation, drywall, carpet, fabric and upholstery.

In this case, the tenants bear the onus or responsibility of proving their claim that the mold growth occurred as a result of some sort of moisture in the rental unit that the landlord was aware of. The tenants confirmed that no effort was made to locate the source of the mold or the moisture. The tenants have failed to provide sufficient evidence in support of this claim. On this basis, I find that the tenants’ application is dismissed.

Conclusion

The tenants’ application is dismissed without leave to reapply.

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: October 27, 2021

Residential Tenancy Branch