Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Reliance Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, FFT

Introduction

The tenants (hereinafter the "tenant") filed an Application for Dispute Resolution (the "Application") on April 7, 2021 seeking monetary compensation for loss or other money owed. Additionally, they seek compensation of the filing fee they paid for the Application.

The matter proceeded by way of a hearing on September 3, 2021, then reconvened after an adjournment on October 20, 2021. This was pursuant to s. 74(2) of the *Residential Tenancy Act* (the "*Act*"). In the conference call hearing I explained the process and provided each party the opportunity to ask questions, as well ash the opportunity to present oral testimony.

I adjourned this matter on September 3, 2021 to ensure each party properly undertook disclosure of their documentary evidence to the other. In the reconvened hearing, the landlord confirmed they received the tenant's evidence package via registered mail. The tenant also confirmed they received the landlord's material. On this basis, I proceeded with the hearing.

Issues to be Decided

Is the tenant entitled to a monetary or order for loss or other money owed, pursuant to s. 67 of the *Act*?

Is the tenant entitled to recover the Application filing fee pursuant to s. 72 of the *Act*?

Background and Evidence

The tenant provided a copy of the tenancy agreement. The parties signed the agreement on September 25, 2019, for the tenancy starting on October 1, 2019. The agreement was for a fixed term set to end on September 30, 2020. The agreement shows the amount of $2,800 rent payable on the 1st of each month. The tenant paid a security deposit of $1,400.

The tenancy ended in March 2020. The tenant moved out at the end of April and confirmed this with the landlord on April 1, 2020. A previous Adjudicator found that, in ending the tenancy, the landlord waived their claim to any rent amounts owing because it was an agreed upon with the tenant where they were ending the tenancy months in advance of the fixed-term end date of September 30.

The timeline of events relevant to the tenant's claim for compensation is as follows:

- February 28, 2020: the tenant contacted the building manager about a leak in the wall between the rental unit and the neighbouring unit
- February 29: the landlord directed a painter and plumber to remove the portion of the wall and stop the leak
- March 2: the team returned to perform more work – from this time to March 12 the tenant did not allow the team access for this work when they attempted to do so
- March 11: the tenant notified the landlord about the smell of mold in the rental unit – to this, the landlord replied: "We will have someone over to deal with fixing the wall as soon as possible."
- March 16: the tenant advised the landlord that they hired a firm to test samples from the wall for mold – the test was completed on March 13, and the tenant stipulated they would not allow the team access until the results were available
- March 18: a restoration company installed air filters
- March 22: the tenant advised the landlord of the air being "quite literally thick" and "making breathing extremely difficult." They were not in the rental unit since March 13, this on the recommendation of the firm that tested samples
- March 22: the landlord offers the tenant another unit in the same building as a temporary relocation until more extensive work is done, and as a precaution against public health measures – this advised the tenant that if they wished to end the tenancy, they would be released from the fixed-term agreement with the return of the security deposit. (A later Arbitrator found this was the landlord's waiver of any claim they had to rent amounts owing.)
- April 1: the building manager noted the tenant was moving out from the rental unit

- April 2: the landlord hired an environmental testing firm to test the alternative unit offered, the latter at the tenant's request prior to their consideration of moving to that unit – the tenant did not advise the landlord whether they wished to move to this other unit
- April 5: the tenant advised the landlord they were not doing well due to mold affecting the air quality – this was bronchitis and "spotting during pregnancy"
- The tenant also advised: "The mold damaged and contaminated our furniture and personal items. This has been costly paying others to pack and move because of the safety risk it poses on me and my loved ones."
- April 6: the building manager entered the rental unit and found many of the tenant's possessions left behind – the tenant advised the following day they would not remove the possessions
- April 12: the landlord received notice that the tenant filed this present Application for $35,000 in compensation for monetary loss or other money owed
- April 20: the landlord received confirmation of no mold present in the alternative unit offered to the tenant

Both in written form and in their testimony, the tenant presented that there were different repairs needing attention from the beginning of the tenancy. These included floors, bedroom heating requiring insulation, a window, and plumbing. In the hearing the tenant mentioned other issues concerning complaints against them. In the tenant's submission, the way the landlord handled these matters during the tenancy puts the landlord's overall credibility into question.

The tenant wanted a mold test conducted; that is why they refused the team access in early March. On their own they hired a firm to inspect and test the rental unit for mold. They asserted that the landlord wanted to merely repair the wall, letting it only dry out before treating it for mold. For proper testing, the wall area needed to remain exposed. By March 17 the landlord was again requesting access to make repairs, even though they were advised by the testing firm that treatment was required before repair.

The report itself was excerpted in the tenant's submission and a complete copy appears in their evidence, dated March 19. Health effects include those described by the tenant here, as well as some affecting their child. There are health effects that are separate to each of three kinds of mold detected within the rental unit. The report recommends a "qualified abatement contractor".

The tenant also presented the chronology of their visits and consultations with a doctor in regard to their child's health matters as well as their own. There was a diagnosis of bronchitis,

and the tenant continued consultations for their own concerns with their current pregnancy, and numbness and nerve damage. A letter from the doctor dated April 4, 2020 sets out "The black mold is definitely detrimental to the health of both the child and her mother. This can easily explain the change in the health status of the child: chronic cough, lethargy, poor appetite, and subsequent weight loss. By the same token, this black mold can also negatively affect the mother's well being." Also: ". . .it is imperative that both the child and her mother be provided an alternative living arrangement as soon as possible. The problem with the black mold must be dealt with thoroughly and as soon as possible."

With reference to the landlord's own separate April 3 testing report (which was in the neighbouring unit, and the proposed alternative), the tenant concludes that the leak discovered on February 28 "is not the cause of the Black Mold detected on both tests performed by the company I hired and [the landlord] themselves." The tenant believes the mold problem was growing for some time prior to February 28.

On their Application, the tenant indicated a compensation amount of $35,000. The tenant prepared a Monetary Order Worksheet dated April 18, 2020, listing 10 separate items. This is supplemented with 51 separate entries of miscellaneous personal items with an associated dollar value. The itemized list, linking to specific pieces of the tenant's evidence, is:

#	Item(s)	$ Amount Claimed
1	mold testing, materials, abatement	2,692.27
2	household/personal items	22,120.01
3	hearing preparation materials	184.96
4	"post evacuation cleaning"	505.00
5	movers/junk removal	954.45
6	"alternate living arrangements"	4,200.00
7	"evo day rental to alternate living"	408.44
8	rent back payment & deposit	19,600.00
9	sentimental (priceless) items	244.01
10	child care/medical expenses	150.00
	Total	**$50,650.70**

In response to the tenant's claim, the landlord prepared a summary and submissions. This was prior to their receipt of the entirety of the tenant's evidence. The landlord prepared a detailed timeline of the issue, cross-referenced with prior emails, the tenant's own mold report, and a prior dispute resolution hearing where the tenant applied for emergency repairs.

The landlord also prepared an "Application of the Test for Compensation" in which they made the following points:

- They made "consistent efforts" to repair the rental unit, being responsive to the issue of the leak and mold. Public health restrictions made securing qualified assistance difficult. On top of this, the tenant did not cooperate, refusing to allow the repair team access to the unit. Additionally, the landlord offered an alternative unit to the tenant, and had a mold test conducted in that rental unit.
- They did not breach the tenancy agreement or the tenets of the *Act*. The damages or loss to the tenant did not result from a breach. The landlord cited s. 32 of the *Act*.
- The tenant did not minimize the damage or loss by impeding the landlord's attempts to repair.

In the hearing, the landlord provided testimony on their interaction with the doctor who prepared the medical information and recommendation of April 4, 2020. They were able to meet with the doctor separately to "get a better idea of the gravity of the situation." The landlord reiterated that the tenant left the rental unit in March 2020, and did not return to the rental unit, this led the doctor to state: "now [they are] back home. . .and feels better". The doctor confirmed the tenant's initial consultation was a walk-in visit in December 2019. After that, the consultations were over the phone. To the landlord, this means the tenant's symptoms and complaints were based on what they stated to the doctor over the phone. The landlord acknowledged the doctor was "genuinely upset" and definitively stated that black mold can affect a person's well-being.

Additionally, the landlord had assisted the tenant by compensating them when something arose. Examples are the lack of heat in one bedroom when the landlord lowered the rent to compensation for additional energy consumption cost, and the tenant's move-in date was delayed for which the landlord reduced that month's rent.

Specific to the issue of mold, the landlord submitted it was not possible to conclude from the evidence that the mold was there for quite some time. According to WorkSafeBC, one cannot confirm the age of mold from samples. This can occur in as little as a few days. The landlord pointed to the tenant's own test report where it provided that items can be salvaged, and other items can be dry-cleaned – this applies to the tenant's own personal property.

In regard to what the tenant presented as evidence, the landlord stated there was not enough evidence present to establish the value of the tenant's loss. The tenant did not provide evidence that personal items were affected by mould. There is certainly not enough evidence to show the landlord was refusing to handle the necessary work.

Analysis

The *Act* s. 58 refers to the limit of any amount claimed. This limit must be within the monetary limit for claims under the *Small Claims Act*. The monetary limit for claims under the *Small Claims Act* is $35,000. This applies to the *Act* with claims for damages or monetary loss. By Rule 2.8 of the *Residential Tenancy Branch Rules of Procedure*, an Applicant who has a claim amount of more than $35,000 may abandon the part of the claim that is over that amount. This leaves the balance of the claim to be heard by the Arbitrator.

In this case, the tenant indicated the amount of $35,000 on their Application; however, the total amount of their claim they provided on the Monetary Order Worksheet is $50,650.70. On my review, the amounts they listed on that sheet total $51,059.14. The tenant did not specify which part of the claim is abandoned, and s. 58 provides that I must not determine the dispute where the monetary limit is more than the limit. In light of this, I consider each item on their worksheet.

The *Act* s. 32 sets out both parties' obligations to repair and maintain:

> (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.
>
> . . .
>
> (5) A landlord's obligations under subsection (1)(a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Under s. 7 of the *Act*, a landlord or tenant 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 -- in this case the tenant -- 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.

As well, a party seeking compensation must present compelling evidence of the value of the damage or loss in question.

I find the evidence is clear, with acknowledgement from the landlord, that a leak caused the identification of the presence of mold within the rental unit. On this subject, I weigh evidence of the landlord concerning their ongoing efforts to combat the problem and accommodate the tenant confronting this issue.

I accept the landlord's submission, backed with ample evidence, that they made immediate efforts to address the issue. They attempted to coordinate the effort with the tenant for a resolution of the problem, and further adapted their plan when the tenant on their own volition hired a testing service that identified mold. I accept the landlord's evidence that this was not possible within days of the finding of mold within the unit, which was not positively identified and made known to the parties until March 19. In the interim, the landlord was attentive and repeatedly visited the unit and communicated with the tenant to the best of their ability, to address the issue and rectify the matter.

I give more weight to the evidence showing this. The two parties accounts are similar on this point. I give less weight to the tenant's evidence showing the landlord's handling of other repairs needed within the rental unit, finding that the issue of the leak and repair and restoration was that of an emergency. I find the other repairs were incidental and received due consideration from the landlord in the form of rent reduction. The tenant has not conclusively proven that the landlord was negligent on this issue of leaking and associated mold by comparing the landlord's efforts to those in the past for other repairs.

Further, I find the evidence of the landlord is not reduced by the tenant's assertion that the landlord was trying to forge ahead with merely repairing the wall, instead of fully treating the mold and undertaking a restoration process. At the time the landlord was going ahead with band-aid solutions and tentative repairs, the positive identification of mold was not known to them.

With my finding that the landlord did not at any time breach the provisions of s. 32 of the *Act*, and the language thereof copied in the tenancy agreement, I examine each part of the tenant's claim for compensation.

1. mold testing, materials, abatement: $2,692.27

The tenant listed three pieces of evidence that total $2,094.48, not the amount they indicated on the Monetary Order Worksheet. I cannot infer what other total they arrived at for this without evidence adding up to that amount.

The first piece is $1,575 and the tenant provided no description for this – it shows an address different from that of the rental unit. This invoice shows "steaming with professional grade mold, bacteria & virus cleaner"; however, there is no date for when this work occurred. This process is not set out in the tenant's written submission. With the onus of proof being on the tenant, I find they have not met the burden here to show this is an actual loss to them. I am not in the position to make an inference on what this invoice represents and nowhere in their evidence is that stated clearly by the tenant.

Next is $99.48, a receipt for supplies. This occurs on the date of the testing within their rental unit. Again, I am not in the position to make an inference on why the tenant made this purchase, or whether it was strictly necessary to the testing process. I am not satisfied this exists as a damage or loss to the tenant when the record shows plastic covering was in place at that time. Similarly, there is no instruction or recommendation from the tester for any mold treatment substance to be applied.

Their third piece of evidence (incorrectly identified by number and letter on their worksheet, from what I can best understand) is for $420. This is dated for a payment due March 19, 2020. I find this is the amount the tenant paid for the mold air sampling test on March 13. I find the tenant proceeding with this process was not identified to the landlord and thus not approved; however, at that juncture I accept that it was a necessary measure, and the tenant was able to accomplish this in the short run. I find this is a reasonable cost for the landlord to bear, and exists exclusive to the tenant's unit only, not involving other units. I award this amount to the tenant.

2. household/personal items: $22,120.01

For this part of their claim, the tenant provided an itemized list of items, and several photos. I find the evidence for this part is not organized in a proper fashion. The list itself is missing items 36-42, making the total amount $20,825.13. With reference to the photos, there is no indication which rooms from the rental unit these items are from, and "mold-ridden materials" (as described in the tenant's submission) are not defined or listed in an inventory. Such as it is presented, I find this is a random list of items with possible prices,

and not cross-referenced to photos that show the items were disposed of. The photos also do not show mold damage, aside from what appears to be one single picture frame. For example, item #26 refers to a dining table for $199; however, nowhere in the evidence is there a picture of a dining table. Also, there is no evidence of a couch, even though that item is listed. A photo labelled as "evidence of furniture (shelf)" is an image of shoes.

I find the tenant's approach to presenting that many of their specific items were disposed of is not presented logically or in an organized fashion. I make no consideration of this evidence because it is not organized. This is an application of Rule 3.7 of the *Residential Tenancy Branch Rules of Procedure*. With no organized evidence present for me to consider, I dismiss this portion of the tenant's claim and there is no award.

3. administrative/preparation costs for hearing: $184.96

The tenant listed $184.96 on the Monetary Worksheet; however, the evidence they presented in the form of receipts totals $124.96.

The *Act* does not provide for recovery of other costs associated with serving and preparing dispute resolution hearing documents. This cost for material preparation is not recoverable.

4. post-evacuation cleaning: $505

The tenant listed two pieces of evidence by number/letter combination; however, these two pieces do not appear anywhere in their evidence. There is thus no receipt or estimate for these costs, nor is there any indication of when the work occurred. With no proof of the value of the loss, I dismiss this portion of the tenant's claim.

5. movers and junk removal: $954.45

The tenant did provide two receipts that correctly add up to this amount claimed. The tenant made the choice to end the tenancy and leave in the accelerated manner that they did. While I find this was borne of legitimate health concerns, I reiterate my earlier point that there was no breach of the *Act* nor the tenancy agreement by the landlord. These are, therefore, not costs that should be borne by the landlord.

With a view to the principle of minimizing their claim, I find the tenant did not provide a rationale on why certain items were chosen over others. That is ultimately the most impactful factor on these costs – either that of transporting personal items, or discarding

unwanted items. The tenant's evidence on what items were discarded, and why, is not clearly presented, and that impacts the logic they rely upon here. I am not satisfied of the link between bad air quality and items needing to be thrown out. The evidence does not establish the value of this portion of the claim.

The tenant was under no legal obligation to move into a separate unit provided by the landlord. That point is clear from earlier Arbitration, and the landlord waived their right to claim rent from the tenant in that agreement. This portion of the tenant's claim is based on their own choice of the manner in which they chose to move. The reason why they chose to move does not rest with the landlord, where my finding is that the landlord did not breach the *Act* or the tenancy agreement.

6. alternate living arrangements: $4,200

The tenant relies on a single piece of evidence for this point. It is a record of a bank transaction for the amount of $2,800 on April 9. In their submission, the tenant presented this was "payment for a new residence which the landlord is responsible for." The amount shown in the evidence is not that which appears on the worksheet, and the tenant did not account for the difference.

Cumulatively, I find this is not a cost incurred because of any breach by the landlord, it was the tenant's own choice to move. The tenant did not show the amount of rent at their new abode; therefore, there is insufficient evidence to show this is a legitimate loss amount to them. I find the landlord provided an option to the tenant of "alternate safe housing". Instead, the tenant chose to move on their own volition. This cost rests with them.

7. vehicle rental to get to alternate living: $409.44

My rationale on the item above carries over into this item. This is a moving expense and there is no compensation under the *Act*, and this item does not trace back to any breach by the landlord. The tenant's choice to move and incur the associated expenses is not an effort at mitigation, and I find a car rental certainly does not represent an effort at mitigation. The tenant did not present why this was a necessary measure, and minus that detail, I dismiss this portion of the tenant's claim.

8. rent back payment & deposit: $19,600

There is no mention of this portion of the tenant's claim, neither in the tenant's submission nor in their testimony in the hearing. Presumably this is the entire amount of the rent they

paid from the start of the tenancy to the end, including the security deposit; however, that calculation is not provided in their evidence. This is also a point where I am not at liberty to make an inference on what this amount represents.

The tenant listed three pieces of evidence they rely on for this piece; however, only one of them appears in the tenant's evidence. That amount is for $2,160 only. There is no other evidence that shows definitively what rent amounts the tenant paid throughout. There *is* evidence of a rent reduction granted by the landlord for various reasons along the way; it is not known whether the tenant accounted for this in this claimed amount.

Because of the lack of evidence on this portion of the tenant's claim, I make no award for costs. The tenant did not establish the value of the monetary loss under this heading.

9. sentimental (priceless) items: $244.01

The monetary order worksheet contains the words: "scan/reprint contaminated photos". There is no receipt or estimate provided for this work. I don't understand how the tenant can provide an exact amount to the cent yet have no evidence for the cost thereof. The tenant has not established the loss for this claim with evidence – there are no items listed, or what kind of work this involved. I dismiss this portion of their claim.

10. childcare/medical expenses: $150

On this item the tenant draws attention to the single documented medical report they provided, dated April 4, 2020. There is no indication that any charge was incurred for this item. Without evidence of any expense incurred in the form of invoice or receipt, I have no understanding of what this item refers to. I dismiss this portion of the tenant's claim.

As set out above, the onus is on the tenant to establish the veracity of their claim. They have not done so here. For the reason above on each separate item, I dismiss the tenant's Application in its entirety, with one exception. Overall, the tenant did not present compelling evidence of the monetary loss in question.

Because the tenant is unsuccessful for the vast majority of their claim, I find it unfair for the landlord to bear the cost of the Application filing fee. I make no award for that reimbursement to the tenant.

Conclusion

Pursuant to s. 67 of the *Act*, I grant the tenant a Monetary Order in the amount of $420. I provide the tenant with this Order and they must serve the landlord with this Order as soon as possible. Should the landlord fail to comply with this Order, the tenant may file it in the Small Claims Division of the Provincial Court where it will be 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 s. 9.1(1) of the *Act*.

Dated: November 15, 2021

Residential Tenancy Branch