



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that he was not recording this dispute resolution hearing.

The Tenant confirmed that he personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on September 12, 2021 (the "NoDRP package"). The Tenant said his brother witnessed the service of the NoDRP package, but the Tenant did not have his brother attend the hearing to provide testimony about service of the NoDRP package. The Tenant provided a handwritten proof of service document as opposed to a formal RTB proof of service form which indicated he served the Landlord with the NoDRP package on September 12, 2021. Pursuant to Section 10 of the Act, I find that the Tenant's use of his handwritten proof of service form does not affect the substance of its content and is not intended to mislead me about service of

the NoDRP package on the Landlord, and I approve of its use. I find the Landlord was sufficiently given the NoDRP package on September 12, 2021 in accordance with Sections 71(2)(c) and 89(1)(a) of the Act.

Issue to be Decided

Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant stated that this periodic tenancy began in approximately 2009 or 2010. Monthly rent is \$967.00 payable on the first day of each month. A security deposit of \$350.00, and pet damage deposit of \$350.00 were collected at the start of the tenancy.

On August 18, 2020 after a lot of rain, the Tenant noticed that mould was growing on the wall, in the carpet and under his bed mattress in his bedroom. The Tenant contacted the Landlord right away and moved everything out of his bedroom and relocated to sleeping in the living room.

In September 2020, a city inspector came into his unit and observed the mould growth. They told the Tenant that this was a safety hazard and the city Ordered the Landlord to repair the wall and get rid of the mould.

On October 6, the Tenant testified that he wrote the Landlord a letter that the repairs were still outstanding and needed attention. On October 7, 2020, the Tenant returned home from work to find a repair person in his rental unit working on the repairs. He had not received any notice from the Landlord that someone would be coming in.

The Tenant applied for dispute resolution seeking a repair Order to get the work properly completed. By the end of December, some work had been completed, but water was still coming into the Tenant's rental unit. On December 29, 2020, the Tenant received a repair Order from an Arbitrator who heard his application for emergency repairs. The previous file number is noted on the cover sheet of this decision.

The Tenant stated that water is no longer coming into the rental unit. The repair extended into his neighbour's unit, but the crack in the outside wall was finally sealed. The Landlord finally completed all the repairs by June 29, 2021, and the Tenant then again began using his bedroom.

The Tenant stated he did not have a lot of money, but he bought a manufacturer's defect new mattress for \$400.00 to replace the damaged one. He provided the Craigslist posting as evidence of the cost for the mattress, he was not provided an invoice.

The Tenant said his whole place had a musky smell and on October 8, 2020 the Tenant woke up coughing. He went to work. The Tenant uploaded documentary evidence from his employer which confirmed that on October 8, 2020 the Tenant came into work but because he was coughing during dispatch, he was immediately sent home and suspended from work from October 8, 2020 to October 22, 2020. His employer has a joint policy and procedure *'that any worker that shows Covid symptoms must remain off work for a period of 14 days. [The Tenant] contacted myself in October 2020 to inform myself on the black mold in his apartment; which caused his discipline. He was tested for Covid with negative results. He had to follow the 14-day policy. NO MATTER WHAT!!!!!!!!!!'*

The Tenant provided an hourly time spreadsheet showing the wages paid by his employer for Day, Afternoon, Graveyard and Holiday shifts. The Tenant pointed to the column showing what his hourly wages were in 2020 for the two weeks he was made to miss work due to him displaying Covid symptoms in that October. These hourly wages would be his gross pay.

The Tenant did an RTB dispute resolution claim and he received an Order for repair of the damaged wall, dry and treat the affected wall, replace the insulation, vapour barrier and drywall in the affected area and replace the affected flooring in the bedroom. He stated they came in and 'put stuff' on the concrete, but that did not fix the leak. The repair crew was supposed to do a remediation, but this did not happen. Eventually in March 2021, the wall was repaired, and not until the end of May 2021 was the carpet taken out and replaced with new carpet. Completion of all repairs was on June 29, 2021.

The Tenant testified that he was not able to use his bedroom from August 18, 2020 to June 29, 2021. He slept in his living room for that whole period.

Analysis

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.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

RTB Policy Guideline #16 addresses the criteria for awarding compensation to an affected party. This guideline 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.*"

Policy Guideline #16 asks me to analyze 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.

It took the Landlord from August 18, 2020 to October 7, 2020 to begin repairs to the Tenant's rental unit. The Tenant had to buy a new mattress which he purchased from Craigslist. The next day after the repair work began, the Tenant woke up coughing, and his employer required him to take two weeks off work due to the Tenant displaying Covid symptoms. The Tenant did not provide medical documentation that would

strengthen the nexus of his cough being linked to the repairs in his rental unit; however, it is very suspicious that the next day after the initial repairs began, the Tenant was experiencing a cough. The Tenant was not paid for the two weeks he was required to take off work. From August 18, 2020 to June 29, 2021, the Tenant slept in his living room as his bedroom was not functional because of the water leak, the mould growth, and the repair work. Pursuant to Section 32(1) of the Act, it is the Landlord's obligation to provide and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law; and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find that the Landlord has breached their obligations to provide and maintain the residential property in a state that complies with the health, safety and housing standards required by law.

I find that the Tenant suffered the loss of his mattress, a nominal portion of work wages and a significant amount of living space when this damage occurred and was not fixed in a short time frame. I also find that the Tenant acted reasonably to minimize his damage or loss whether that meant communicating with the Landlord about the outstanding repairs or applying for dispute resolution with the RTB.

I find that the Tenant is entitled to compensation for damage or loss because of the water ingress in his rental unit, and the damage that it did. I find that the Tenant lost out on his wages for a two week period, and he had a reduced amount of living space in his rental unit because of the water damage and mould growth. Pursuant to Section 67 of the Act, the Tenant is awarded a Monetary Order calculated as follows:

Monetary Award

Mattress			\$400.00
Wage loss	15% of \$45.24	for a 70 hr pay period	\$475.02
Loss of living space	50% total living space for 10 months		\$4,835.00
TOTAL MONETARY AWARD:			\$5,710.02

Conclusion

The Tenant's application is granted and I grant a Monetary Order to the Tenant in the amount of \$5,710.02. 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 of British Columbia 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 Act.

Dated: March 17, 2022

Residential Tenancy Branch