



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPM, OPB, MNDCL-S, FFL
Tenants: OLC, RP, RR, MNDCT, FFT

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order. The original hearing began on February 28, 2022.

As per my Interim Decision of the same date, I allowed the tenants' Application for Dispute Resolution seeking an order to have the landlord make repairs; a rent reduction; and a monetary order.

In the February 28, 2022 hearing I determined that the landlord was not entitled to an order of possession and that the tenancy would continue, based on the terms of the tenancy agreement signed by the parties on April 27, 2021. I adjourned the hearing at that point to be reconvened on April 1, 2022 to address the monetary claims of both parties.

Both hearings were conducted via teleconference and were attended by the landlord's agent and both tenants.

In the first hearing, I also noted that the tenants had named their children on their Application for Dispute Resolution. As the children are not named nor are they signatories to the tenancy agreement, I find the children are not tenants and I amend the tenants' Application for Dispute Resolution to exclude the children's names.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for breach of an agreement and based on a mutual agreement to end tenancy; to a monetary order for unpaid rent and utilities; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 44, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to an order to have the landlord complete repairs, a rent reduction; a monetary order for losses during the tenancy including a loss of value in the tenancy and other losses; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 65, 67, and 72 of the *Act*.

Background and Evidence

As noted in the February 28, 2022 Interim Decision, the parties agreed that the tenancy began in 2020 through a series of six-month fixed term tenancy agreements. The latest tenancy agreement signed by the parties was submitted by both parties.

The most recent tenancy agreement submitted was signed by the parties on April 27, 2021 for a six-month fixed term beginning on May 1, 2021 for a monthly rent of \$2,400.00 due on the 1st of each month. As per the Interim Decision, I ordered that the tenancy now continues on a month-to-month basis.

The landlord seeks the payment of rent and utilities for the period from November 2021 to the date of the hearing. The tenants submitted that they had provided the landlord with e-transfers since rent was due in November 2021 and they have renewed the e-transfers as they have expired. The tenants advised that on March 29, 2022 all e-transfers for all relevant rent and utilities had been renewed.

The landlord's agent acknowledged receipt of the tenants' e-transfers, but the owner of the property wanted to wait until the decision of this hearing was rendered before accepting the e-transfers. I note, I addressed the issue of whether or not the landlord could accept rental payments in the Interim Decision of February 28, 2022.

The tenants submit that over the course of the tenancy the landlord has made extensive delays in following up to repair requests and in some cases has not yet done anything for the issues in this table:

Repair Request	Duration
Washing Machine (clothes)	May 2020 to July 2021 (15 months)
Dishwasher	May 2020 to June 2021 (13 months)
Toilets	May 2020 to October 2021 (17/18 months)
Carpenter Ants	May 2020 to present
Toxic mold	Winter 2020 to present

The tenants seek orders to have the landlord make repairs to the residential property responsive to their submitted report from their environmental engineers made in conjunction with the Environmental Relative Moldiness Index (ERMI) testing.

The tenant submitted that despite identifying a number of issues to the landlord they have all taken an unreasonable length of time to respond to their complaints. Both

parties have submitted text messages detailing some of the discussions they have had regarding the appliance issues and ants.

From the documentary evidence of both parties the following is table of the initial correspondence reporting issues:

Date	Issues
May 1, 2020 (text)	The landlord acknowledges he will contact pest control and ask for an explanation of the washing machine leak
May 2, 2021 (text)	The tenants report that they had noticed mould in the rental unit over the course of the previous winter and that it was all along the baseboard and started growing on the furniture
May 17, 2021 (email)	The tenant asks for the landlord for pest control of carpenter ants and requests the landlord have an ERMI analysis completed on the property.
June 3, 2021 (text)	The tenants ask the landlord when the toilets and washing machine will be repaired.
June 5, 2021 (text)	The landlord advises that dishwasher will be installed the following day and the toilets will be replaced the following week.
September 3, 2021 (text)	The landlord is attempting to schedule a person to come to the property about a toilet issue. The tenants' response indicates that they have been waiting for over a year for the repair
October 3, 2021 (text)	The tenants report a leak in the dishwasher
October 14, 2021 (text)	The tenants report a wet patch in the ceiling
November 16, 2021 (text)	The tenants report the roof is leaking

The landlord submits that he does attend the property on a regular basis, approximately 10 times during the tenancy, but that he usually doesn't enter the rental unit. The landlord submits that as a result of supply chain issues relating to the Covid 19 pandemic the landlord was unable to obtain replacement parts and or appliances during this time period.

He submits that the washing machine issue was related to the tenants using too much soap. The landlord has provided two receipts for repairs to the washing machine dated June 29, 2021 and July 14, 2021. The receipts do not provide any explanation as to what was repaired or why. The landlord has provided a receipt for a dishwasher replacement dated June 1, 2021.

In regard to the issue of mould the tenants have submitted the following relevant documents:

- Copies of receipts for naturopathic remedies, therapies, tests, consultations, massages, and medication, beginning from July 2021 to December 2021;
- A copy of a receipt for a HEPA Filter dated November 23, 2021;
- A copy of an invoice dated October 25, 2021, for ERMI testing and a container of disinfectant in the amount of \$587.50;
- A copy of an invoice dated January 17, 2022, for fogging treatment for mould;
- A copy of a letter provided by a medical doctor dated September 19, 2018 regarding a possible diagnosis, for the female tenant, of Chronic Inflammatory Response Syndrome and the requirement to establish four separate elements, including the results of an ERMI analysis (that was completed for a previous home of the tenant). The letter suggests the tenant take an additional test and forward the results to the doctor;
- A copy of a letter provided by a different medical doctor dated October 4, 2018 that does not provide a diagnosis but recommends that the female tenant should, “due to her medical condition” move out of her then home as a precautionary measure due to the existence of mould in the property.
- Copies of two echocardiograms - one dated June 19, 2019 and one dated November 30, 2021. During the hearing the tenant explained the two echocardiograms show abnormalities have developed for her since her tenancy began. The tenants also submit that their family have experienced chronic coughs and migraines; and
- Two reports dealing with the effects of mould – one specific to the effects on children and the second with respect to “Sick building syndrome (SMB).

In addition, the tenant has submitted a report dated October 25, 2021, entitled: RE: Fungal Investigation and ERMI PCR Analytical Testing with Professional Opinion. The report outlines the following relevant information:

- Observations of multiple areas of previous water damage; no bathroom ventilation fans; moulds forming quickly at window frame base; moisture identified by skylight; and condensation collecting in window frames and sunroom roofing on the main floor;
- An overview of the test and results stating, in part:
 - “....The ERMI value is typically between -10 and 20. Your sample has an ERMI score of 17.2 which is extremely high for even healthy individuals and indicates that the occupants of that indoor environment and indicates that the occupants of that indoor environment are being exposed to toxigenic and pathogenic fungal contaminants. The threshold for a safe and healthy environment is -4.0. At this point in time, the levels are elevated by 21 points.....”;
- The report recommends that there is some level of professional remediation which would include reparation of water damage under controlled circumstances to prevent dispersing of toxic fungal spores; ventilation in the bathrooms to be installed; and fogging the entire house including in water damaged wall and ceiling cavities; and

- A copy of the Analytical Results of the ERMI tests.

The landlord submits that the condition of the rental unit is due to the condensation on the windows and that the tenants need to open the windows more and use the air conditioning to ensure the moisture levels remain lower.

The tenants also seek compensation from the landlord in the form of a monetary order for compensation for costs associated with the landlord's failure to deal with the repair requests; the loss of use and quiet enjoyment of the property and costs incurred as a result of the mould issue and rent reductions as follows:

Description	Amount
Naturopathic remedies, therapies, tests, consultations, massages, and medication	\$911.41
HEPA Filter	\$145.59
ERMI Test and Disinfectant	\$587.51
Fogging – original estimated claim - \$649.53 – adjusted claim based on actual cost	\$1,117.91
Repeated cleaning of mould on windowsills and in sunroom – 15 hours at \$40.00 per hour	\$600.00
Rent Reduction for failure to make repairs – original claim was for 20 months at \$200.00 per month – adjusted claim based on date of hearing increased to 24 months	\$4,800.00
Pain and suffering; loss of quiet enjoyment; loss of use; cost of future, current, and ongoing health treatments (no specific breakdown on these points was provided)	\$28,105.96
Total	\$35,000.00

Note 1: While the total amount of the tenants' claim has increased beyond \$35,000.00 due to the actual cost of fogging and the addition of 4 months to the rent reduction claim, I have noted only a total that is consistent with the statutory limitations of my authority.

Note 2: As advised during the hearing, I have no authority to adjudicate a claim for pain and suffering or the potential of future or ongoing health treatments. As such, the parties provided no testimony or submissions regarding these two specific items, and I have not considered those portions of the tenants' claims. However, I do have authority to consider the loss of quiet enjoyment; loss of use; and any medical current medical costs.

However, the tenant did submit that in regard to the claim for \$28,105.96 they considered the impact on a family of 5; the related health issues; and the loss of quiet enjoyment.

Analysis

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.

Section 26 (1) of the *Act* stipulates that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act*, to deduct all or a portion of the rent.

At the start of the hearing on April 1, 2022, I clarified with the parties that the tenants had renewed all of the e-transfers for the rent owed for the period claimed by the landlord as well as the subsequent rental months since the first hearing and that the landlord had not yet, at the time of the second hearing accepted those e-transfers.

The landlord's agent submitted that the owner of the property did not want to accept the rental payments until this decision was rendered. As the parties agreed that all of the rent and utility charges owed to the landlord had already been transferred to the landlord and it was only the landlord's actions that was the reason that the landlord had not "received" payment of rent, I find that the tenants have already paid all rent owed to the landlord at the time of the hearing.

As per my Interim Decision of February 28, 2022, I had advised the landlord that despite the outcome of the decisions in these matters the landlord was entitled to accept the e-transfers provided by the tenants for rent owed. As the tenants have provided the landlord with their e-transfers, I find the tenants have paid rent in accordance with the requirements set out in Section 26 of the *Act* and the tenancy agreement.

As such, I find the landlord has failed to establish that they have suffered a loss or if they did, that the loss does not result in a violation of the *Act*, regulation or tenancy agreement on the part of the tenant.

Therefore, I dismiss the landlord's monetary claim in its entirety, without leave to reapply.

Section 32(1) of the *Act* states 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.

Section 32 goes on to say that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access and that a tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant, or a person permitted on the property by the tenant.

In regard to the washing machine, dishwasher and toilets, I find that while the landlord's agent responded to the complaints of deficiencies promptly and did eventually repair these issues they did not do so in a timely manner.

Despite the landlord's assertion that the supply chain issues had impacted their ability to obtain replacements or complete repairs, they have provided no evidence of any such impacts. For example, I note that receipt for the replacement dishwasher is dated June 1, 2021 and the text message, dated June 5, 2021, from the landlord to the tenants regarding the installation states it will be installed the following week. The landlord has provided no evidence with respect to any other reasons for any delays in completing the repairs noted.

In relation to the carpenter ant issue, I find there is no evidence before me, with the exception of a text message dated May 1, 2020 from the landlord stating he is arranging a remedy and a text message dated May 17, 2021 from the tenants asking for pest control again.

I note that pest control is always the responsibility of the landlord, unless the landlord can provide sufficient evidence to establish that any pest infestation is the result of a tenant's action or neglect. I also note that pest control is not necessarily a one-time requirement. There is no evidence before me that the ant infestation is a result of the tenants' action or neglect.

From the evidence before, I find the tenants have established the landlord or their pest control service provider have failed to attend the property; assess any adequate pest control needs; or develop a pest control program. I find this is a violation of the landlord's obligations under Section 32 of the Act, and **I order the landlord must immediately contact a pest control service provider with the express purpose of assessing any pest control needs and the development of pest control program based on the recommendations of the service provider.**

In regard to the issue of mould, I am satisfied that the tenants have established that there is a mould problem in the rental unit. I also find that the mould issue is related to mould that can be toxic and pathogenic. I accept the recommendations of the report submitted that the rental unit requires remediation that is specifically outlined for the landlord.

I am not persuaded by the landlord's submissions that the tenants should open more windows and use the air conditioning. The report clearly indicates that there are issues with the building envelope and with other factors such as the lack of vents and fans in the bathrooms.

As a result, I find that the landlord has failed in their obligations under Section 32 of the *Act* to remediate mould from the property. **I, therefore, order the landlord to make the recommended repairs as soon as possible.**

In order to assess the tenants' claim for a rent reduction, I find that since the start of the tenancy the landlord has been made aware of various deficiencies with the rental unit and as a result, the tenants have lost value of the tenancy because of the landlord's failure to deal with the deficiencies in a timely manner.

While the documentary evidence of the duration of each deficiency is rather vague, I do accept that these deficiencies have been ongoing and, at times, overlapping. I accept the tenants' submission of a rent reduction in the amount of \$200.00 per month to be reasonable.

As the onset of the reporting of deficiencies start at least May 1, 2020, I find the tenants are entitled to the above \$200.00 per month rent reduction from May 1, 2020 and order it will continue until the landlord has complied with the above noted repair orders. For clarity, the landlord must have a documented pest control program in place and operating and full remediation of all mould related repairs must be completed before the rent reduction is ended.

Furthermore, I order that the rent reduction will end when the parties agree that the work is completed, or the landlord can obtain an order from the Residential Tenancy Branch that the work is sufficiently completed to end the rent reduction.

As I have found that rent has been paid up to and including the month of April 2022, I order the tenants will reduce future rent payments by \$200.00 per month commencing on May 1, 2022. In addition, I find the tenants are entitled to past rent reduction for 24 months in the amount of \$4,800.00.

In regard to the remainder of the tenants' claims I make the following findings.

As I have found that the landlord is responsible for the remediation of the mould issue, pursuant to Section 32 of the *Act*, I find the landlord is also responsible for the costs the tenant has incurred to test for and then begin the remediation work required as per the environmental engineer's report.

Specifically, I find the landlord is responsible for the cost of the ERMI testing and disinfectant (\$587.51); the fogging of the rental unit (\$1,117.91); and the cost of a HEPA filter (\$145.59).

In regard to the tenants' claim for naturopathic remedies, therapies; consultations, massage, and medications, I find there is insufficient evidence provided from the tenants to establish that these losses result specifically from the current mould issue.

I make this finding based on the lack of current medical documentation provided regarding any medical conditions for any members of the tenants' family. Specifically, there is no medically documented evidence at all that the male tenant or the children have suffered any medical issues or incurred any medical costs resulting from mould.

In relation to the medical documentation provide for the female tenant there was only one current piece of medical documentation provided. This was the echocardiographic report dated November 30, 2021 and although the tenant provided her interpretation of the meaning of the report, I find that without the benefit of a medical doctor or naturopathic doctor providing their interpretation I am unable to determine the veracity of the tenant's interpretation of the results.

Furthermore, the letters provided by the tenant from medical doctors from 2018 appear to be related to the specific conditions of a former home but without any current reference to her current situation. I also note that some of the invoices submitted show the tenant had some testing and consultations completed in the fall of 2021 but she has not provided copies of those results or any other current medical reports attesting to her current medical conditions or prescribing the products for which she has invoices.

Based on the above, I dismiss the tenants' claim for these costs in the amount of \$911.41 for medical costs, without leave to reapply.

Likewise, in relation to the tenants' claim for cleaning of windowsills and in the sunroom, I am not satisfied that the tenants have incurred any *additional* costs as a result of mould. The tenants submit an estimate of 15 hours at \$40.00 per hour. However, she has not provided any evidence that this over and above the family's usual cleaning regime or how they determined the value of \$40.00 per hour.

Therefore, I dismiss the portion of the tenants' claim in the amount of \$600.00 for cleaning, without leave to reapply.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29; and
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

As to the remainder of the tenants' claim for pain and suffering; the costs of current; future and ongoing costs of health treatments; loss of quiet enjoyment and loss of value I note the following.

As noted above, I cannot adjudicate a claim for pain and suffering or the cost of future and ongoing costs of health treatments. In regard to the issue of current costs of health treatments, I find the tenants, have already put that claim forward and I have dismissed it above for the reasons given there – I will not repeat those reasons here.

I also have recognized, in the form of the rent reduction of \$200.00 per month (both past on ongoing), as compensation for the loss of value in the tenancy because of the landlord's failure to complete repairs.

However, I also find that by the tenants have suffered a loss of quiet enjoyment of the property, in the form of having to continuously remind the landlord of the required repairs; having to follow up and obtain the ERMI analysis and then completing the fogging treatment, even once the landlord had evidence of mould in the residential property.

Therefore, I find the tenants are entitled to compensation for this loss of quiet enjoyment, pursuant to Section 28(b). As to the quantum, while the tenant's claim for this section of their Application was for \$28,105.96 which included the above items that I have already addressed and they have provided no further breakdown to this amount, I find the tenants have failed to establish a value for this loss.

Residential Policy Guideline 16 stipulates that an arbitrator may award compensation in situations where the value of the damage or loss is not as straightforward such as "nominal damages". Nominal damages are a minimal award and may be awarded where there is no signification loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As I have determined the tenants have suffered a loss of quiet enjoyment in the form of unreasonable disturbance because they have repeatedly had to seek repairs and considering that this has been an ongoing issue from the start of the tenancy, I grant the tenants a one-time award for nominal damages in the amount of \$500.00.

Conclusion

To confirm, based on both the Interim Decision of February 28, 2022 and this decision, the landlord's Application for Dispute Resolution is dismissed in its entirety and without leave to reapply.

Based on the above, I find the tenants are entitled to monetary compensation and grant a monetary pursuant to Section 67 in the amount of **\$7,251.01** comprised of \$4,800.00 past rent reductions; \$145.59 HEPA filter; \$587.51 ERMI testing and disinfectant; \$1,117.91 fogging; \$500.00 loss of quiet enjoyment and the \$100.00 fee paid by the tenants for this application. This order must be served on the landlord.

I note that any award granted in this monetary order that has already been claimed by the tenants through a previous reduction in a rent payment is considered as satisfying the award. In addition, the parties may consider the remainder of the order to be satisfied through further reductions in future rent payments.

If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 15, 2022

Residential Tenancy Branch