



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TOP PRODUCERS REALTY
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: MNDL-S, FFL
Tenant: MNDCT, MNSD, FFT

Introduction

The Landlord filed an Application for Dispute Resolution on December 17, 2021 seeking compensation for damage caused by the Tenant. Additionally, they are seeking reimbursement of the Application filing fee.

The Tenant filed their own Application on February 9, 2022 seeking the return of the security deposit, compensation for other money owed, and reimbursement of the filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on July 25, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded.

Issues to be Decided

Is the Landlord entitled to compensation for damage caused by the Tenant, pursuant to s. 67 of the *Act*?

Is the Landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the Tenant entitled to the return of the security deposit, pursuant to s. 38 of the *Act*?

Is the Tenant entitled to compensation for other money owed, pursuant to s. 67 of the *Act*?

Is the Tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement, jointly signed by the parties on January 14, 2019. This was for the tenancy starting on January 19, 2019 for a fixed term ending on July 31, 2019, to revert to a month-to-month agreement after that time. The rent amount was \$1,275 payable on the first day of each month. The Tenant paid a security deposit amount of \$637.50.

An addendum to the agreement provides that “The Tenant must obtain contents and liability insurance prior to move in.” The Landlord required proof of the insurance in place, and the addendum clause notes “The Landlord accepts no responsibility for the Tenant’s possessions or living out expenses as a result of any peril which may occur.”

The Landlord in the hearing stated that the Tenant properly notified the Landlord of the tenancy ending on November 30, 2021. The Tenant via email on December 16, 2021 provided their forwarding address to the Landlord as shown in the Tenant’s evidence.

The Landlord’s claim

The Tenant noted the date of November 29th as the date when the moved items in the rental unit and noted the presence of mould. They sent photos to the Landlord showing this on that same day. On November 30, the Landlord contacted the Tenant and called an emergency services firm. The Landlord stated they never got to meet the Tenant at the end of the tenancy for a joint inspection meeting because their schedules did not coincide. The Landlord entered the rental unit on November 30th.

Upon entry, the Landlord discovered “numerous items left covered in mould”. They provided photos in their evidence that show this at the time of their entry/inspection. As set in their evidence, the Landlord’s photo package is 59 pages in length, giving detail on each photo, with a timeline describing the inspection and calls to emergency

services and air-quality specialists. The package contains the Tenant's own photos from November 29, the Tenant's discovery of mould present in the unit.

The Landlord provided a Condition Inspection Report that shows their record of the inspection they conducted without the Tenant. This is dated November 30, 2021. In several areas the report notes "visible mold on wall" or "visible mold on baseboard + floor", along with "items left." The Landlord noted the Tenant "would not sign" the Condition Inspection Report where normally required. The Landlord noted "Mold remediation/removal of drywall, baseboards. Spray, cleaning, removal of all items left behind. Reconstruction of walls & baseboards."

The Landlord presented that they normally conducted inspections every 2 months on a regular basis. The Landlord in the hearing noted it was difficult to gain access with this Tenant; however, the owner was okay with not entering the unit every 2 months. They made no inspections inside the rental unit during public health restrictions "unless absolutely necessary", with the Tenant stating they were sick on "several occasions". The record of the Landlord's last inspection of this type, as it appears in their photo package, was August 4, 2021. The Tenant made a call for repairs on October 20, 2021 for a leaking kitchen tap and broken blind and a plumber attended.

The Tenant in the hearing stated they were not aware of the Landlord's inspection schedule. They questioned why the Landlord did not notice the presence of mould if there were to be inspections every 2 months.

The emergency services firm entered the rental unit on December 1, 2021. Their report to the Landlord notes "Visible suspect mold subsistence was observed on interior walls, floors and baseboards." They noted a higher "relative humidity reading" inside the rental unit, that "could increase the chance for water to condensate on the surface of low temperature building materials" and "Prolonged moisture problem will cause mold problems." Their suggested work was to remove the "negative air pressure" and remove the drywall baseboards insulation and flooring. The process involves bio-washing and spraying affected areas, and vacuuming. An estimate for that work listed was \$4,216.97.

An air-quality specialist inspected the rental unit on December 5, 2021. The summary in that 14-page report states: "the mould present in the residence is not caused by structural or mechanical deficiencies in the residence." They attributed the mould growth to: heating with baseboard heaters which provide "localized heat", and

Remnants of cardboard on the floor and on the wall indicate that the infested areas were used for storage, resulting in high levels of condensation in the cooler areas behind the boxes. Over time, and left undisturbed, the moist areas behind boxes provided ideal conditions for mould growth.

For this emergency services firm, the Landlord paid \$2,898.88. For the air quality specialist, the Landlord paid \$525.

The Tenant left the rental unit with items left behind. This is as indicated on the Condition Inspection Report and the Landlord noted this for specific rooms within the rental unit. For this, the Landlord hired a firm who, on their invoice, listed "Remove all former tenants garbage, food and furniture left in unit." This cost the Landlord \$288.86.

The Landlord also retained a cleaning service for "full move out cleaning service" as provided on that firm's invoice dated December 29, 2021. This cost was \$280. The Landlord claimed the amount of \$294 on their Monetary Order Worksheet dated December 17, 2021.

The Landlord provided a contractor's estimate dated December 13, 2021 for drywall repair and baseboard install and painting the affected areas. This estimate was for \$1,240.58.

The Landlord's position is that the mould in the rental unit was caused by the Tenant. This was due to everything being stored up against walls, hampering airflow. In particular, this is due to the storage of cardboard boxes against walls and other areas in the rental unit. With cardboard being the worst material for mould to spread. They submit the photos give a clear picture of how bad the situation became while the Tenant was living in the rental unit.

The Tenant's claim

In their Application, the Tenant provided a succinct summary of their position:

There was a serious mold issue in my suite. Inspections failed to find it, however, it was found in the unit next door and remedied at the expense of the landlord. The mold was concealed behind stored items and furniture. I could not see it until items were moved on move out day. A thorough inspection with a moisture meter would have found the issue I lost more than 50% of my belongings as a result including my sentimental items. I suspect my health has also been impacted.

As evidence, the Tenant provided pictures of their personal items they disposed of. They also provided images from Facebook marketplace for similar items of approximate

value, including a queen bed (\$550), a dining table and chairs (\$300), a bookshelf (\$40), a coffee table (\$275), a blanket (\$25), pillows (\$20), a dresser (\$200), a recliner (\$550), shoes ordered from Amazon (\$219.86), and clothes (numerous items, totalling \$775.47).

In the hearing, the Tenant presented that they had a scheduled meeting for the final move-out inspection, but the Landlord did not attend that meeting as scheduled.

They described the rental unit as being part of a home in a lake area, with lots of condensation for this reason. They were the first new Tenant in the home after it had been rebuilt. They had a bedroom door with a bookcase in front of it to prevent its use as a door. They maintained they did not cover vents or heating in the rental unit, and both front and back doors were usable. They spoke specifically to the inspector who came about “tenant neglect” as being the cause of the issue; however, that inspector stated it was not neglect, rather owing to the location of the rental unit property in a lake area.

The Tenant described their move-out as a “forced evacuation”, and they were forced to leave items behind because of the presence of mould in their personal items. They stated they advised the Landlord of this and there was no discussion of the costs for disposal.

They placed the blame for this problem on the Landlord, with their implementation of bimonthly inspections: the Landlord should have noticed this issue during one of their inspections.

The Tenant had a short dialogue with their neighbour from the adjacent rental unit. As stated in their Application and in the hearing, this neighbour also had a mould issue that the Landlord in that case remediated at their own expense. An undated text message from the Tenant (in which they ask “just wondering if the Property Managers found you responsible for the mold in your unit and if they charged you back for the remediation?”) has that neighbour’s response: “The mould was not from me and they did not charge me.”

In the hearing, the Landlord clarified this singular point on the neighbouring rental unit to state clearly that the issue was not that neighbour’s fault. That was an issue with a roof cavity that was leaking, affecting drywall within the rental unit.

The Tenant noted they provided their forwarding address to the Landlord on December 16, 2021 via email. They added double the amount of the security deposit to their claim total for the reason that the Landlord did not return it to them after they provided their new address as required.

The Tenant made a Monetary Order Worksheet on February 9, 2022 listing the items that they had to depart with because of mould infestation:

#	Items	\$ claim
1	queen bed	550.00
2	dining table and four chairs	300.00
3	bookshelf	40.00
4	coffee table	275.00
5	blankets/pillows	45.00
6	men's clothing/shoes	995.33
7	two dressers	520.00
8	reading chair	550.00
9	videos & DVDs	200.00
10	sentimental – photos, letters, videos, “reels” – cannot replace	5,000.00
Total		7,975.33

The Tenant also claims double the amount of the security deposit. In their submission they note they provided their forwarding address to the Landlord as required; however, the Landlord did not return the deposit. This piece of their claim is \$1,275.

Analysis

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 an 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.

The relevant portions of the tenancy agreement between the parties reads as follows:

- The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.
- The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant. The tenant is not responsible for reasonable wear and tear to the residential property.

The *Act* s. 32 sets out a landlord and a tenant's obligations to repair and maintain residential property. The language above from the tenancy agreement reproduces exactly what is set out in this section of the *Act*.

In summary on the obligations and rights of each respective party via the *Act* and the tenancy agreement, I find that the Tenant bears equal responsibility to maintain "reasonable health, cleanliness and sanitary standards" within the rental unit. A tenant is generally responsible for paying cleaning costs where the property is left at the end of the tenancy in a condition that does not comply with that standard. A tenant is also generally required to pay for repairs where damages are caused – either deliberately or as a result of neglect – by the tenant.

I find the state of the rental unit here clearly deteriorated lower than the standard required by health, safety, and sanitary standards. This was due to the presence of a large amount of mould requiring remediation, and further surety for the Landlord as to the quality of air within the rental unit going forward. As the Arbitrator I must determine whether repairs or maintenance were required due to reasonable wear and tear or due to deliberate damage or neglect by the Tenant.

I find the presence of mould increased within the rental unit due to the neglect of the Tenant. This was not a long-term tenancy; however, within that time a substantial portion of mould accumulated, and this is chiefly due to the Tenant's own lack of care in monitoring for this issue. I find it was the Tenant's obligation to maintain reasonable

cleanliness within the rental unit. This would include routine cleaning, and in these instances on my review of the photos provided by the Tenant I find even more simpler in-depth cleaning of a routine, regular, or even yearly period would have revealed the presence of mould. I find the obligation to maintain health and sanitary standards extends throughout the rental unit, especially on the areas not easily visible such as closets or behind a bookshelf. Though the Tenant gave a statement on their interaction with an inspector who pointed out the problem was not one of Tenant neglect, there is nothing in the evidence to show the building was structurally unsound or subject to some other extreme manifestation of moisture leading to the problem. That is to say, I find it more likely than not that there was a moisture *presence*, yet one that could be managed with minimal effort over time, or regular thorough cleaning.

With that, I find the Landlord also had the obligation to maintain health, safety, and housing standards. I find the Landlord was aware of the condensation and moisture accumulation issue in that area. It is now known whether they regularly maintained an inspection schedule, though it was stated that exceptions were made. While such inspections would not be so invasive to establish the presence of mould in closets behind boxes and behind shelving (among other places) I find the Landlord had the obligation to either inform the Tenant of the nature of the area – and I find this was known to the Landlord given that they mentioned it in the hearing – or maintain a strict inspection schedule with this in mind.

I find both parties' obligations are clear from the *Act* and set out in the tenancy agreement. I apportion 50% to each party in the compensation for remediation, establishing satisfactory air quality after the mould issue, and repairs and painting. In sum, I find there was an element of Tenant neglect; however, there was an equal apportionment of obligations to the Landlord, chiefly to maintain an inspection schedule as required.

I grant the Landlord compensation to the amount of 50% for remediation (award: \$1,449.44), the air quality assessment (\$262.50), and repairs and painting (\$620.29).

The *Act* s. 37 sets out that a tenant who vacates must “leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. . .”

The Tenant presented that they left the rental unit in a hasty fashion. They had to abandon possessions; however, it is plain they made no effort to move out correctly from the rental unit. For this reason, I grant the Landlord full compensation for the removal of garbage (\$288.86) and extra cleaning within the rental unit (\$280).

The Tenant has not presented sufficient evidence to establish mould damaging to all of the personal property that they are claiming was damaged. In the photos they provided there is no visible mould present, and I find it certainly is not possible that mould infested all of the personal items as listed. This list, as provided, appears to include simply all of the Tenant's possessions. I don't entirely understand the Tenant's motivation for leaving all of their items behind.

In applying the four criteria listed above, I find the Tenant has not established that damage or loss exists. They left their items behind; therefore, they no longer possess them. I find this is not proof of damage to all of those items to the degree that they all require replacement at the expense of the Landlord. That certainly is not a move toward mitigating one's loss.

Therefore, I dismiss entirely the Tenant's claim for money owed for their personal possessions, without leave to reapply.

The *Act* s. 38(1) states:

- . . .within 15 days of the later of
 - a) the date the tenancy ends, and
 - b) the date the landlord receives the tenant's forwarding address in writingthe landlord must do one of the following:
 - c) repay . . .any security deposit . . . to the tenant
 - d) make an application for dispute resolution claiming against the security deposit

Following this, s. 38(4) sets out that a landlord may retain an amount from the security deposit with either the tenant's written agreement, or by a monetary order of this office.

Further, s. 38(6) provides that

- If a landlord does not comply with subsection (1), the landlord
- a) may not make a claim against the security deposit or any pet damage deposit, and
 - b) must pay the tenant double the amount of the security deposit . . .

I find the Landlord had the Tenant's forwarding address on December 16. The Landlord filed their Application the following day. This means the Landlord was well within their rights to apply for compensation against the security deposit amount.

The *Act* section 72(2) gives an arbitrator the authority to make a deduction from the security deposit held by the landlord. The Landlord here has established a claim of \$2,901.09. After setting off the security deposit amount of \$637.50, there is a balance of \$2,263.59. I am authorizing the landlord to keep the security deposit amount and

award the balance of \$2,263.59 as compensation for money owed because of damage in the rental unit.

I dismiss the Tenant's Application in its entirety, without leave to reapply. I make no award to them for the Application filing fee.

Because the Landlord was successful in their claim, I award the \$100 Application filing fee to the Landlord.

Conclusion

I order that the Tenant pay to the Landlord the amount of \$2,363.59. I grant the Landlord a monetary order for this amount. The Landlord may file this monetary order at the Provincial Court (Small Claims) 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: August 19, 2022

Residential Tenancy Branch