



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on January 3, 2023. The Tenants applied for multiple remedies, as follows, pursuant to the *Residential Tenancy Act* (the *Act*):

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67; and,
- recovery of the filing fee.

Both sides were present at the hearing and provided affirmed testimony. All parties provided testimony and were given a full opportunity to be heard, to present evidence and to make submissions. The Landlord confirmed receipt of the Tenants' evidence and Notice of Dispute Resolution Proceeding package. The Landlord did not submit any documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Tenants entitled to compensation for money owed or damage or loss under the *Act*?

Background and Evidence

Both parties agreed that the Tenants moved in on or around June 1, 2021, and moved out on August 13, 2021. The parties agree that the Tenants paid monthly rent of \$2,250.00 for June and \$2,500.00 for July. The Tenants did not pay any rent for August.

The Tenants stated that they are seeking the return of all rent they paid for June and July 2021, which was \$4,750.00 because they assert there was an unhealthy level of mould present in the rental unit. The Tenants assert that they both suffered respiratory issues, ill health, and lost work due to the mould. Further, the Tenants assert that they were forced to move because of the mould, which caused them to incur many expenses for temporary accommodation, as they searched for suitable longer-term accommodation.

The Tenants did not provide any monetary worksheet detailing their expenses, but they provided about 13 receipts for hotels and short-term accommodations (largely in USD for accommodation in Oregon). The Tenants stated they lost work because of the mould related illnesses, but they did not specify what dates this occurred, or what their financial loss was for this matter.

The Tenants stated that they found they started getting sick shortly after moving into the rental unit, and after several discussions with the Landlord, the Landlord agreed to have the rental unit, and crawlspace, tested for mould. No report was provided into evidence, and the Tenants only provided a photo of the poorly connected dryer vent, and a suspicious area on the floor near the laundry, covered by a garbage bag.

The Tenants stated that the Landlord hired and paid for a mould inspection in early August 2021. Following this, the parties agreed to end the tenancy on August 13, 2021, so that the Landlord could address any potential mould issues.

The Landlord stated that they never knew about any potential mould issues until the Tenants complained, and then a mould inspector came to investigate in August 2021. The Landlord stated that he addressed any issues as soon as he was made aware of them. Although the Landlord did not explain what work was done. The Landlord feels he has been fair since he gave the Tenant's free rent for August, and gave them a deal on cleaning/painting after they moved out.

The Tenants stated that they tried to file a claim under their renter's insurance but the claim was denied because they determined that it was caused by Landlord neglect/negligence. The Tenants did not provide a copy of the insurance documents.

Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenants must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I have reviewed the testimony and evidence on this matter. I note the Tenants are seeking \$4,750.00 as compensation (rent for June/July 2021) to cover their costs for hotel rooms, lost work, moving costs, and medication resulting from having to move due to mould issues in the rental unit. I note the Tenants have provided 13 receipts, mostly for temporary accommodation in Oregon, totalling around \$3,500.00 in USD, plus one receipt for \$349.00 CAD in Penticton. I also note the Tenants indicated on their application that part of their claimed amount is based on lost work, moving costs, and medications. However, no breakdown was provided for how much work was lost, and when, and what actual financial loss resulted from the lost work. Further, the Tenants did not specify or explain in the hearing how much moving costs were, or how much

medications cost them. Also, I note that many of the Tenants' receipts are in US dollars and they have not provided any explanation regarding what this cost them in Canadian Dollars. No monetary worksheet or breakdown was provided.

I note the following Rule:

2.5 Documents that must be submitted with an Application for Dispute Resolution

To the extent possible, the applicant should submit the following documents at the same time as the application is submitted:

- **a detailed calculation of any monetary claim being made;**
- *a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and*
- *copies of all other documentary and digital evidence to be relied on in the proceeding, subject to Rule 3.17 [Consideration of new and relevant evidence].*

I do not find the Tenants have sufficiently provided a detailed calculation of their claim, and as a result have not sufficiently demonstrated the value of their loss. Since the Tenant's were required to demonstrate all 4 parts of the above noted 4 part test, in order to be successful, I find they have not met the onus placed on them to establish their claim.

However, I note that an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

"Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I turn to the following portion of the Act.

Landlord and tenant obligations to repair and maintain

32 (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.

Although the Tenants failed to provide any copies of the “mould report” or further documentary evidence to corroborate the alleged mould issue, I note the Landlord does not refute that there was an issue with mould in the crawlspace due to improper dryer venting. It appears this issue required attention and remediation. The true extent of the issue is unclear. However, as per the testimony provided in the hearing, I accept that both parties came to an agreement to end the tenancy, verbally, due to some significant mould findings during the inspection in early August 2021. I find it more likely than not that the Landlord breached section 32(1)(b) of the Act due to the poorly vented dryer, and potential mould accumulation. I am satisfied that this issue could make certain portions of the rental unit unsuitable for occupation.

Given this breach of the Act, and considering the Tenants’ lack of sufficient details for their monetary claim outlined above, I find a nominal award is appropriate. I decline to award the Tenants’ full claim, and instead award the Tenants \$500.00 for “nominal damages.”

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenants were partly successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenants paid to make the application for dispute resolution.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$600.00**. This order must be served on the Landlord. 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: January 4, 2023

Residential Tenancy Branch