



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes FFT MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

Preliminary Issue: Service of Tenant's Application and Evidence

Despite the tenant's attempt to serve the landlord with their application and evidence by way of registered mail on May 21, 22, the packages were not picked up, and subsequently returned to the tenant. The landlord testified in the hearing that they never received any package from the tenant, and only became aware of the hearing after receiving an email from the RTB.

After discussing the issue and the contents of the tenant's dispute resolution package with both parties during the hearing, the landlord consented to the admittance of the tenant's evidence and proceeding with the scheduled hearing.

The landlord did not submit any written evidence for this hearing.

Issues

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the cost of the filing fee from the landlord for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy began March 1, 2018 and ended on October 31, 2020 after a settlement was reached during a hearing held on September 28, 2020. Monthly rent was set at \$2,250.00, payable on the first of the month. The tenant's security deposit of \$1,250.00 was used to offset a monetary order payable to the landlord as ordered by an Arbitrator on March 30, 2021.

The tenant requested the following monetary orders as outlined in their monetary order worksheet dated March 25, 2022.

Item	Amount
Mattress	\$700.00
Couch	550.00
Three leather jackets	800.00
25 pieces of clothing	1,000.00
Family Heirlooms	700.00
Leather Purse	225.00
Six Month Rent Reduction-50% of rent	6,750.00
Loss of Quiet Enjoyment	6,750.00
Aggravated Damages	2,500.00
Filing fee	100.00
Total Monetary Order Requested	\$20,075.00

The tenant filed this application as they feel that the landlord failed to comply with their obligations under section 32 of the *Act* by failing to maintain the property in a state that is suitable for occupation by the tenant. The tenant is seeking monetary orders for

losses associated with the mould in the home such as damaged clothing and personal belongings, and a reduction in the value of the tenancy. The tenant is also seeking a monetary order for loss of quiet enjoyment and aggravated damages as the tenant felt harassed by the landlord, and bullied to move out.

The tenant submitted photos of their damaged personal belongings, mould in the rental unit, and a report that was completed by a restoration company after the home was inspected on June 11, 2020. The tenant testified that they had paid for the report and inspection as they wanted to show the landlord that the home required urgent repairs.

The report notes mould growth inside the home, including along the walls in the master bedroom closet and in the carpet. The report also noted possible sources of water ingress from the exterior of the home, and recommended that a building envelope specialist inspect the marked areas. The report noted a section where no siding was installed, and recommended that the area be sealed off and siding be completed "as this may cause water ingress over time".

The report notes that a moisture meter was used to check the walls, which were dry on the date of inspection. The report states that the source of the moisture "may be related to a chimney, on the exterior side, that has multiple cracks causing water ingress from rain leading to drywall being affected".

The report also notes that although no mould was found on the exterior window in the spare bedroom, the moisture meter detected that the drywall was wet, and "source of moisture looks to be a water ingress issue from the exterior wall/siding of the home. It is recommended that the owner of the house hire a building envelope specialist to inspect the area and recommend repairs to address possible water ingress issues".

The tenant submitted a copy of a text messages between them and the landlord requesting a timeline for when the landlord would address the issues in the home. The tenant submits that instead of addressing the problem, the landlord would make excuses. The tenant testified that despite the positive relationship that they used to have with the landlord, the landlord's attitude changed, and bullied and harassed the tenant until the tenant agreed to move out. The tenants were served a 2 Month Notice to End Tenancy for Landlord's Use on August 11, 2020. As noted earlier in this decision, the tenancy ended by way of a settlement reached at the hearing held on September 28, 2020 to deal with that 2 Month Notice.

The tenant called several witnesses who testified during the hearing. IG testified in the hearing that they resided in the home during this tenancy, and started to experience headaches and bloody noses, which the IG suspected was caused by the mould in the home. IG testified that they would have trouble sleeping, and had bad breathing problems, and was often sick. IG testified that the situation got so bad that they had to switch rooms. IG testified that that they would get bloody noses in middle of the night, which got worse over time, and stopped after IG moved out. IG testified that their family doctor stated that after mentioning their issues, the doctor informed them that the issues could be caused by mould. IG testified that they had an allergy test done, which confirmed that they were allergic to mould.

TV also testified in the hearing, and also resided in the home. TV testified that their breathing issues were bad, and that their room had a lot of mould in the closet. TV testified that they often went out of town for work just to avoid being around the mould. TV testified that the mould was hard on their lungs, and that the issues got worse during heavy rain. TV testified that they only discovered the mould in the closet in 2020 after heavy rainfall, which the tenant suspects is because of the chimney on the other side of the closet. TV testified that the landlord would promise to repair the home, but the landlord insisted that the tenant move out instead.

KG testified that they also lived in the home, and testified that they had many conversations with the landlord about changing the window in their son's room, without any response.

The landlord responded in the hearing that they moved into the home on October 31, 2020 and have been living in the home with no issues. The landlord testified that the tenant raised these issues in a previous hearing, and that the tenants have not paid the monetary orders granted to the landlord.

The landlord disputes that they have failed to comply with the *Act*, or that they harassed the tenant. The landlord requested that the monetary claims be dismissed as the landlord feels that they had fulfilled their obligations during this tenancy.

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss.*

Section 65(1)(c) and (f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

As stated above, the tenant applicant has the burden of proof in supporting their claims for a rent reduction and monetary compensation. The tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

The landlord's obligations to maintain and repair facilities in a rental property are set out in section 32(1) of the *Act* which reads in part as follows:

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.

I have considered the written evidence before me, and the sworn testimony of both parties and the witnesses called in this hearing. While I am satisfied that the tenant had clearly established that there was mould in the home, and that the occupants suffered adverse health conditions while living there, I must still assess whether the issues can be attributed to the landlord's actions, or failure to comply with the *Act*.

The landlord denies that the mould issues were due to the landlord's failure to maintain the property, and instead attributed the issues to the tenant's failure to clean and maintain the home.

In light of the disputed claims brought forth by the tenant, I note that the burden falls on the tenant to support their claims. In this case, although I am extremely sympathetic about the immense suffering the tenant and their family have experienced while living in the home, I am not convinced that the suffering was the result of the negligent or intentional actions of the landlord.

I have reviewed the report submitted by the tenant, and I find that although the report does confirm the presence of mould in the rental unit, and pointed out possible causes of the mould, including water ingress from the exterior of the home, the report noted the need for further inspection by an envelope specialist. I find that the report does not conclusively identify the source of the mould in the home, but did point out possible sources that may require attention.

The tenant requested a 50% rent reduction for six months. Based on the tenant's testimony, the occupants IG and TV avoided areas of the home in an effort to avoid what they felt were health problems caused by the mould. Although I acknowledge that the occupants in this home were impacted by what they believed were health issues caused by the mould, I am not satisfied that the tenant provided sufficient evidence to support the rent reduction claimed.

Although I acknowledge that IG and TV suspected their health issues were caused by the mould in the home, I do not find this suspicion to be supported in evidence, whether

this be in the form of a report from a medical professional or some document of similar nature. I do not find correlation to be sufficient proof of causation, and I am not satisfied that the IG and TV's suffering can be attributed to the mould or moisture in the home.

As noted earlier in this decision, the burden of proof falls on the applicant to support their claims. As multiple factors could contribute to the presence of mould such as high humidity due to living conditions, or unknown leaks, I am not satisfied that the tenant has met the burden of proof to support that the presence of mould was caused by the landlord's actions or failure to comply with the *Act*. For this reason, I dismiss the tenant's claims for the rent reduction and claims for damage or loss to their personal belongings without leave to reapply.

As this application references the conduct of the landlord, I note that the Compliance and Enforcement Unit (CEU) ensures compliance the residential tenancy laws of BC. When a landlord or tenant has seriously and deliberately not followed BC tenancy laws, the CEU may investigate and issue administrative monetary penalties. Under section 87.3 of the *Act*, "Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

- (a)contravened a provision of this Act or the regulations,
- (b)failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or
- (c)given false or misleading information in a dispute resolution proceeding or an investigation.

I note that the Director has not delegated to me the authority to impose administrative penalties under section 87.3 of the *Act*. That authority has been delegated to a separate unit of the Residential Tenancy Branch. The administrative penalty process is separate from the dispute resolution process. The Compliance and Enforcement Unit (CEU) is a team within the Residential Tenancy Branch, and the tenant may pursue the appropriate remedied through this process if they wish. As I do not have the delegated authority to administer any penalties under section 87.3 of the *Act*, I decline to make any orders under this section.

In addition to other damages an arbitrator may award aggravated damages. These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged, for aggravation to the

injury caused by the wrongdoer's behaviour. They are measured by the wronged person's suffering.

The damage must be caused by the deliberate or negligent act or omission of the wrongdoer. However, unlike punitive damages, the conduct of the wrongdoer need not contain an element of wilfulness or recklessness in order for an award of aggravated damages to be made. All that is necessary is that the wrongdoer's conduct was highhanded. The damage must also be reasonably foreseeable that the breach or negligence would cause the distress claimed.

They must also be sufficiently significant in depth, or duration, or both, that they represent a significant influence on the wronged person's life. They are awarded where the person wronged cannot be fully compensated by an award for pecuniary losses. Aggravated damages are rarely awarded and must specifically be sought. The damage award is for aggravation of the injury by the wrongdoer's highhanded conduct.

The tenant requested \$2,500.00 in aggravated damages, and \$6,750.00 for loss of quiet enjoyment during this tenancy. Although I sympathize with the tenant and the fact that they suffered greatly during and after this tenancy, I find that they did not establish how these amounts were obtained, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damages the tenant is seeking in this application. Furthermore I find that the tenant failed to establish how their suffering was due to the deliberate or negligent act or omission of the landlord. Although the tenant did submit some evidence to show that they had reached out to the landlord to address the mould issue by text message, and although the tenant did file an application on September 28, 2020 for the landlord to perform repairs, the tenant elected to move out on October 31, 2020, and withdrew their application for repairs instead. No findings were made on whether repairs were required on part of the landlord.

Although there is reference to harassment and bullying on part of the landlord, I do not find the tenant's claims for loss of quiet enjoyment and aggravated damages were sufficiently supported in evidence. On this basis I dismiss the tenant's monetary claim for aggravated damages and loss of quiet enjoyment without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was not successful in her application, the tenant must bear the cost of this filing fee.

Conclusion

The tenant's entire application is dismissed without leave to reapply.

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: February 15, 2023

Residential Tenancy Branch