Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT, MNSD, FFT**

Introduction
This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "*Act*") for:

- A monetary order for damages or compensation pursuant section 67;
- An order for the return of a security deposit or pet damage deposit pursuant to section 38; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the landlord and the tenant attended the hearing. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package and the tenant acknowledged service of the landlord's evidence. The tenant stated he did not get a detailed description of the landlord's evidence, making it difficult for him to follow however I advised the tenant if he had difficulty, he was to notify me.

The landlord stated he is hard of hearing. I advised the landlord that if he couldn't hear something or needed it repeated, he was to notify me and the person speaking would repeat themselves.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

Issue(s) to be Decided

Is the tenant entitled to a monetary order?
Should the tenant's security deposit be returned?
Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is the lower unit in the landlord's home and the landlord resides in the upper unit. The tenancy began sometime in 2013 or 2014. A hearing was held before an arbitrator and on September 7, 2022, that arbitrator ordered the landlord return the tenant's security deposit in the amount of $700.00. A monetary order was granted in favour of the tenant, and the file number for the previous dispute is recorded on the cover page of this decision.

The tenant gave the following testimony. The claim is for damage to his property and possessions. During the tenancy, the landlord restricted the heat to his unit, causing mold to grow on his possessions. The tenant seeks to recover the replacement value of all his possessions.

According to the tenant, he flew to Edmonton in mid-March 2020 and stayed there until mid-November 2020. During this time, the landlord turned off the heat to the unit. When he returned, it was so cold he couldn't even sleep in the house. He tried to contact the landlord who was out of town, but his son came 3 days later to turn on the heat. The tenant testified he has no control of the heat in his unit.

The tenant testified that when he came back in November, mold severely took hold of the furniture, his clothing and the walls. The tenant did not take any photographs of the mold or notify the landlord in writing in November 2020. The tenant testified that he

verbally told the landlord about the mold issue, however nothing was sent to the landlord in writing.

The tenant left the unit again on December 8th to see his ailing grandfather and stayed in Edmonton until February 18, 2021. During that time, the landlord turned off the heat to the unit again. The tenant sent the tenant's son a message via whatsapp on February 19th and it took a couple of days for the landlord to turn on the heat. The tenant did not mention in this message that there was any issue with mold, although the tenant testified that he told the landlord via telephone.

The tenant left the unit for Edmonton again on February 29, 2021 and remained there until May, 2021. The tenant testified that the landlord once again turned off the heat. The tenant notified the landlord that his possessions were covered in mold while speaking with the landlord, according to his testimony. Once again, the tenant acknowledged that no written notification was given to the landlord.

The tenant brought some of his possessions to a safety & environmental service company in Alberta for mold spore trap sampling of the tenant's clothing stored in the garage of a residence located in Edmonton, Alberta on June 09, 2021. A copy of the report was provided as evidence and the safety coordinator noted an active mould source exists. She recommends all porous materials and contents on the concrete floor of the garage be checked for moisture and water damage; cardboard and clothing should be thrown out and all remaining porous material be elevated from the concrete floor in the garage.

The tenant testified that when he moved out, he had to put all of his possessions into storage and that they are all unusable due to the smell. The tenant attributes the smell to the mold caused by the landlord not having the heat on while the tenant was away in Edmonton. He tried to clean his mattress, but it could not be ridden of the mold smell; his furniture likewise had mold inside the cushions. Even nonporous materials such as his dumbbells and his rollerblades were ruined.

The tenant testified that in a previous arbitration, he was granted a monetary order of $700.00 for the return of his security deposit but the landlord has not yet paid it.

The landlord gave the following testimony. The rent since the beginning of the tenancy was $1,400.00 per month, including utilities. It was not raised anytime during the tenancy. During the pandemic, the tenant asked for assistance and the landlord agreed to defer a portion of the rent, agreeing to a temporary reduction to $500.00 per month.

When the landlord entered into the tenancy agreement with the tenant, the landlord chose this tenant because this tenant agreed to reside in the unit while the landlord frequently left the main portion of the house unoccupied for extended periods. The landlord wanted somebody onsite to keep the house in good working order. When the tenant first left on March 10, 2020, he didn't return until September 2020 and this concerned the landlord since the entire house was left empty for months.

In September 2020, the landlord hired a cleaning lady to clean the tenant's unit because "it was like a garbage dump". The landlord testified that there was no mold there at the time, although the tenant's leather items stunk due to lack of air circulation.

The landlord argues that the basement has two sources of heat, forced air furnace and electrical baseboards in the living room. The baseboard heaters were never shut off by the landlord and were always left on. When the tenant returned from another 2-month long trip to Edmonton on February 19, 2021, he complained to the landlord about it being too cold. The tenant retrieved a key from the neighbour and successfully turned on the forced air heaters while guided by the landlord. The landlord points that in the whatsapp message on February 19th, the tenant does not mention any mold. Nor is mold ever spoken about in conversation.

The tenant left for Edmonton again on February 26th for back surgery and during this time, the landlord sought to return rent to $1,400.00 from $500.00 per month, angering the tenant. On May 18, the tenant emails the landlord notifying him that he will move out by June 1, 2021. A final walkthrough is done on May 29, 2021 and there are no signs of mold noticed by either the landlord or the tenant. No concerns of mold are mentioned to the landlord.

When showing the unit to prospective tenants on June 2nd, the landlord noticed the drywall in the ceiling is moist, due to a pinhole leak in the pipe above. The landlord argues that the tenant was negligent in not notifying the landlord of the issue of the leak in the pipe during the 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* 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 followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a balance of probabilities.

The tenant seeks compensation from the landlord for the damage to his possessions due to the failure of the landlord to keep the heat on while both were absent from the property. The tenant alleges that his possessions were damaged due to mold that grew on them because the landlord didn't provide heat in the unit while he was away.

First, I turn to the nature of the tenancy. The tenant rented a basement suite in the landlord's house. As a tenant, it would be reasonable to expect that a basement suite would be prone to damp and moisture if left unattended for months at a time, especially during colder months. Essentially, the tenant treated the residential unit as a storage unit while he spent the majority of the 2020 and the first few months of 2021 Edmonton. If there was any damage to the tenant's possessions, the tenant must take on some of the responsibility for his own actions by ensuring his own unit is periodically checked in on and not left unattended for several months at a time.

The tenant argues that section 27 of the Act requires that a landlord must not terminate or restrict a service or facility if (a)the service or facility is essential to the tenant's use of the rental unit as living accommodation, or (b)providing the service or facility is a material term of the tenancy agreement. While this may hold true for a unit that is being

used as a living accommodation, in this case I find that the rental unit was used more as a storage facility than a living accommodation from March 2020 to the end of the tenancy in May of 2021.

Section 32 of the Act requires the landlord to provide and maintain a 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. In this case, it wasn't until November 2020 that the tenant notified the landlord that the lack of heat in the unit was making it unsuitable for occupation by the tenant. The evidence before me indicates the landlord rectified it by allowing the tenant to access the forced-air heat immediately after being notified. Again, I emphasize that the rental unit is a basement suite that could reasonably be expected to be more damp than an above ground living space. The tenant's own negligence in leaving the space right after discovering it to be "moldy" between November and December 2020 is a contributing and mitigating factor that must be considered in this case. Despite the allegation of his possessions being moldy, the tenant proceeds to leave the unit again for several months on December 8th, 2020 and apparently does nothing to remedy the situation by taking his "severely moldy" possessions to a heated storage facility, or purchasing or renting drying fans.

Further, the landlord testified that the basement unit had both forced air heat as well as baseboard heaters. The tenant did not dispute this fact during the hearing, and I accept the landlord's testimony on this point. The tenant had the opportunity to leave the baseboard heaters on throughout his extended absences and could have negated the potential for his possessions to suffer from mold.

As stated in section 7(2) of the Act, 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. While the tenant testified that between March 2020 and November of 2020, "mold severely took hold of the furniture, his clothing and the walls" the tenant provided no written evidence ever notifying the landlord of the situation involving his damaged possessions. I would expect that if the landlord were in another country at the time that the tenant would have provided photographs of the alleged mold infestation to substantiate the allegation.

I have reviewed the photos of the unit that the tenant alleges are depictions of mold and I find them to be insufficient evidence of a substantial mold infestation. The images depicted are consistent with any living space located in a basement suite that can

reasonably be expected to have some mold growth if left unattended for months at a time. Likewise, the images of the tenant's possessions allegedly showing mold do not satisfy me there is a substantial issue with mold. Lastly, I note that the mold spore trap sampling submitted as evidence by the tenant was done after the tenant moved his goods to Alberta and the examiner clearly suggested the concrete floor where the tenant's goods are stored are a potential source for the mold.

Perhaps the most important aspect of this case is that the tenant has not provided any documentation to show he ever notified the landlord that his goods were being harmed due to the mold growth arising from a lack of heat. Although the tenant testified that he "told" the landlord, the landlord firmly disputes this testimony. On a balance of probabilities, I find the landlord did not violate the Act, regulations or tenancy agreement and cause any damage to the tenant's possessions. I find the tenant has failed to prove the existence of the loss (point 1 of the 4 point test). The tenant has not proven the loss was the result *solely* on the actions of the landlord, since the tenant willingly left his possessions in the basement unit for several months without checking in on it (point 2). Most importantly, the tenant did not take reasonable steps to mitigate or minimize the loss (point 3). For these reasons, I dismiss this application without leave to reapply.

The second portion of the tenant's claim – to have the security deposit returned, was previously adjudicated upon and a monetary order was already issued. As such, this portion of the tenant's claim is also dismissed without leave to reapply.

The tenant's application was not successful and the filing fee will not be recovered.

Conclusion

The 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 03, 2023

Residential Tenancy Branch