



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **MNDCT, MNSD, MNETC, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“Act”) for orders as follows:

- for a monetary order for damage or compensation pursuant to section 67 of the Act
- For an order returning the security deposit pursuant to section 38 of the Act
- For an order for compensation equal to 12 months rent pursuant to section 51 of the Act
- For reimbursement of the filing fee pursuant to section 72 of the Act

Landlord SS appeared with counsel AF. Tenant PS appeared. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The landlord acknowledged receiving the tenant’s dispute notice and materials. The landlord further testified that the tenant was served with their materials in support of the application by registered mail sent March 28, 2023. The landlord provided proof of service with Canada Post tracking information and a notice card stating the package was ready for pickup on March 30, 2023. Based on the testimony of the landlord I find each party duly served in accordance with sections 88 and 89 of the Act.

Preliminary Issue

The tenant acknowledged receiving the return of \$1,676.00 of her security deposit as a result of a previous order of an arbitrator dated January 20, 2023, requiring the landlord to return this portion of the security deposit. The tenant acknowledged that this portion of her claim had been previously decided. Therefore, I dismiss this ground of the tenant's claim.

Issue(s) to be Decided

1. Is the tenant entitled to a monetary order for compensation?
2. Is the tenant entitled to a monetary order for compensation of twelve months rent?
3. Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced April 16, 2021, for a one year fixed term. The tenancy ended March 31, 2022. Rent was \$2,200.00 per month. The landlord has returned the security and pet deposits in the amount of \$1,676.00 as required by a previous decision of an arbitrator.

The tenant in her evidence claimed the following compensation:

- \$425.00 for a mold report that the tenant paid for because of a water leak in the strata. An invoice dated January 12, 2022, was provided in evidence. The tenant acknowledged previously claiming for this amount before the RTB but submitted that the context now is different.
- \$150.00 for cleaning costs due to the water leak. An invoice dated October 7, 2021, was provided in evidence
- \$693.00 in moving costs that the tenant alleges were required as a result of her move. The tenant provided a receipt in evidence, The tenant alleges that she did not move pursuant to a notice to end tenancy and moved because a restoration company recommended the rental unit be vacated to correct the water leak. The tenant referenced a report by Circle Restoration completed October 6, 2021
- One month's rent of \$2,200.00 claimed as the tenant alleged she should have been evicted pursuant to a Two or Four Month Notice to End Tenancy and would have been entitled to that compensation under the Act

- The tenant also claimed compensation for 12 months rent under section 51 of the Act but at the hearing acknowledged that she did not receive a Two or Four Month Notice to End Tenancy
- The tenant also claimed punitive, aggravated, nominal damages for health reasons due to the presence of mold in the rental unit

The landlord stated that the claim for the mold report and cleaning had already been considered and dismissed by a previous arbitrator. The landlord also alleged that the tenant moved as a result of an order of possession and a subsequent writ of possession granted by the Supreme Court of British Columbia on February 17, 2022. The writ of possession was provided in evidence.

The landlord takes the position that the tenant is not entitled to moving costs as the reason for moving was not due to the leak. Further the landlord submits that the leak was not the fault of the landlord, and the landlord produced a witness, AS. The witness testified that he was the owner of XTR Building Services, they specialize in leaks and the leak was the result of the tenant's improper use of the shower curtain.

The landlord's position is that most of the claims by the tenant have been resolved in previous decisions of arbitrators. The landlord further states that the tenant is not entitled to punitive, aggravated, nominal damages as the landlord acted appropriately to correct the leak and hired appropriate trades to fix the issue including a plumber and a restoration specialist. The landlord provided their reports in evidence. The plumbing invoice was dated November 30, 2021.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application, the tenant in this case.

Section 51 Compensation

It is not in dispute that the tenant did not receive a Two or Four Month Notice to End Tenancy.

Section 51 of the *Act* clearly states that a tenant must receive a notice to end tenancy under section 49 to be entitled to any compensation. This position is supported by *Policy Guideline #50* which notes:

A tenant may apply for an order for compensation under section 51(2) of the RTA if a landlord who ended their tenancy under section 49 of the RTA has not:

- accomplished the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice to end tenancy, or
- used the rental unit for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice (except for demolition).

The tenant's claims for one month free rent pursuant to section 51 of the Act and compensation equal to twelve months rent pursuant to section 51 of the Act are dismissed without leave to reapply as the tenancy did not end pursuant to a Two or Four Month Notice.

Mold and Cleaning Costs

The tenant's entitlement to compensation for the mold report and for cleaning costs were decided in the RTB decision rendered on June 9, 2022. The arbitrator specifically dismissed both claims without leave to reapply. The context of the claim does not have appeared to have changed. The tenant has reapplied contrary to the decision of the previous arbitrator specifically dismissing the claim without leave to reapply. As these claims have been decided previously, I dismiss the tenant's application on these grounds without leave to reapply.

Moving Costs

The tenant is claiming her moving costs of \$693.00 as she alleges that she was required to move due to the water leak. I find that the tenant was required to vacate the rental unit on February 17, 2022, based on the writ of possession granted on that day by the Supreme Court of British Columbia. Therefore, the tenant is not entitled to claim her moving costs and I dismiss the tenant's application on that ground without leave to reapply.

The tenant is also claiming punitive aggravated and nominal damages due to mold. Section 32 of the Act states in part:

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.

(2)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.

I find that the landlord complied with the Act and made arrangements for repair and remediation as soon as the water leak was discovered. I acknowledge conflicting reports on the cause of the leak, however, regardless of the differing reports on the cause, the landlord took active steps to determine the cause and repair when required. Therefore, the landlord satisfied their duties under section 32 of the Act. I dismiss the tenant's application on this ground without leave to reapply.

As the tenant is unsuccessful in her application, she is not entitled to recover the filing fee for the application.

Conclusion

The tenant's application is dismissed in its entirety 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: April 22, 2023

Residential Tenancy Branch