



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNDCT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. In this application for dispute resolution, the tenant applied on July 4, 2022 for:

- compensation for monetary loss or other money owed, in the amount of \$3,643.55.

The hearing was attended by the tenant and one of the landlords. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and Rule 7.4 requiring evidence to be presented.

The tenant raised a concern regarding service of the landlord's responsive evidence, stating that it was sent on March 17, 2023 and the tenant picked it up on March 23. The landlord testified she sent it registered mail on March 17, and provided a tracking number in support. Rule 3.15 states that the respondent's evidence must be received by the applicant not less than seven days before the hearing. I find the landlord's evidence served in accordance with section 89 of the Act, and, pursuant to section 90, received by the tenant on March 22, 2023, seven days before the hearing. Therefore, I will consider it in my decision.

The landlord did not raise a concern regarding service of the tenant's hearing materials.

Issue to be Decided

- 1) Is the tenants entitled to compensation for monetary loss or other money owed?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began July 21, 2015; rent was \$750.00, due on the first of the month; and the tenant had paid a security deposit of \$375.00.

In support of her monetary claim for \$3,643.55, the tenant submitted a Monetary Order Worksheet.

The first item on the worksheet is \$871.06 for personal items and furniture the tenant testified was damaged due to the presence of mould and mildew in the rental unit. The tenant explained that as she was a full-time student and did not have the resources to replace all of the items that had been damaged, she provided retail links to comparable items, with prices.

The tenant provided extensive testimony regarding the mould problem and how it was caused by a lack of ventilation in the bedroom, which resulted in excessive moisture accumulation and cold temperatures. The tenant submitted photos of items damaged by mould, and photos of what is described as "mold/mildew growth" in the unit, on a ledge and along the base of a wall. The tenant testified that in the fifth year of the tenancy she told the landlord about the mould problem, and that in the last year of the tenancy the tenant was noticing mould on her clothing and furniture. The tenant testified she told the landlord, who apologized for the mould damage.

The second item on the worksheet is \$253.27 for cleaning "mold/mildew." The tenant submitted that she was seeking compensation for eight hours she spent cleaning as a result of the mould issue, and for the purchase of related cleaning supplies and silica beads, and provided a cost breakdown.

The landlord submitted that as the tenant sent her black and white photos as evidence it was difficult to see damage, and that the photo of the tenant's dresser was not taken in the rental unit, and the landlord never saw the dresser in the unit. The landlord testified she does not know if the prices provided by the tenant for the replacement of the damaged items are accurate.

The landlord testified that there was not a mould or mildew problem in the unit before the tenant, and has not been an issue since the tenant moved out. The landlord testified she now has a dresser in the space and has been storing bedding in it for 16 months with no sign of mould. The landlord submitted that the tenant created the conditions resulting in the mould growth.

The next item on the worksheet is \$8.92 for “respiratory meds.” The tenant submitted that she was hospitalized in November for severe respiratory difficulty, but all diagnostic tests came back negative. The tenant submitted she developed mild lung disease and respiratory difficulty that has been slowly improving since moving out of the unit. The tenant submitted that her doctor said that her symptoms were consistent with exposure to mould or mildew, but that there is no test to confirm that. Submitted as evidence is a receipt for inhalers.

The landlord testified that the tenant had told her that the tenant had pneumonia in the past. The landlord said she was not responsible for the tenant’s respiratory issues during the tenancy.

The next item on the worksheet is \$310.00 for an internal medicine consult with a veterinary specialist. The tenant testified that around the end of October and beginning of November she noticed her cat showing signs of respiratory disease. The tenant testified that assessment by specialists came back negative, but that the internal medicine specialist stated that the cat’s symptoms are consistent with long-term exposure to mould or mildew. The internal medicine specialist’s report is submitted as evidence. The tenant submitted that because the landlords had wanted a cat in the home for rodent control, the landlords had verbally agreed to assist with any substantial vet bills.

The next item is \$400.30 for chest x-rays and a radiologist review regarding the cat’s respiratory distress, and an estimate is submitted in support. The tenant testified that the cat’s condition has improved since they moved out of the unit.

The last item on the worksheet is \$1,800.00 for “illegal rent collection.” The tenant testified that as she had thought she must pay the landlord a rent amount in line with inflation, she proactively began paying \$50.00 more each month, beginning in October 2018. The tenant testified that she seeks to recover these additional payments as the parties did not sign a new tenancy agreement for the increased rent amount. The tenant submitted that the landlords have contravened section 43 of the Act, and are not entitled to retain the additional money the tenant paid.

The landlord stated that it was the tenant's decision to begin paying more rent, and that the landlord did not initiate a rent increase. Submitted in support is a text message between the parties, dated October 1, 2018, in which the landlord asks the tenant if she is aware her rent cheque is for \$800.00, and the tenant acknowledges it is for more, responding that it is due to inflation.

Analysis

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant is seeking compensation from the landlord in the amount of \$3,643.55..

Section 7 and 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the Regulation, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In this case, the onus is on the tenant to prove entitlement to a monetary award.

Policy Guideline 16 states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenant has claimed \$1,843.55 for damaged personal items and furniture, for cleaning costs, medication, and veterinary care, taking the position that these losses

were due to the presence of mould in the rental unit. The tenant testified that the mould was caused by a lack of ventilation in the bedroom, and that she and her cat became ill as a result. The tenant testified that her doctor and the veterinary specialist had both indicated that the symptoms she and her cat had been experiencing were consistent with exposure to mould or mildew, but that there was no test to confirm a causal connection. The tenant testified that both she and her cat improved once they moved out of the rental unit.

The landlord testified there was not a mould or mildew problem in the unit before the tenant, and that there has not been an issue with mould since the tenant moved out. The landlord submitted that the tenant created the conditions resulting in the mould growth, and that the tenant had told her that the tenant had previously had pneumonia.

The parties have presented conflicting accounts regarding the cause of the mould in the unit. The tenant indicated that the mould was a result of conditions in the unit, and the landlord submits that as there was not a mould problem in the unit before or after the tenancy, it appears the tenant created the conditions that permitted the mould growth. I find on a balance of probabilities that the tenant has provided insufficient evidence to prove the mould in the unit was the result of a failure of the landlord to comply with the Act, Regulation, or tenancy agreement, and that the tenant therefore is not entitled to compensation.

The tenant has claimed \$1,800.00 for illegal rent collection, testifying that because she thought she must pay the landlord a rent amount in line with inflation, she had proactively begun paying \$50.00 more each month beginning in October 2018. The tenant testified that she now seeks to recover these additional payments as the landlords contravened section 43, and are not entitled to retain the additional rent the tenant paid.

The landlord testified that it was the tenant's decision to begin paying more rent, and that the landlord did not initiate a rent increase. The landlord submitted documentary evidence in support.

I find that as the parties agree the tenant voluntarily began paying more rent and that the landlord did not initiate a rent increase, the tenant has failed to prove that the landlord has contravened the Act, Regulation, or tenancy agreement. Therefore, I find the tenant is not entitled to compensation.

Conclusion

The tenant's application is dismissed.

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 27, 2023

Residential Tenancy Branch