



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding ROYAL LEPAGE PREFERRED
REALTY and [tenant name suppressed to protect privacy]

DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- An order for compensation for the Tenants, pursuant to section 67.
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

Preliminary Matters

The following issues were withdrawn at the outset of the hearing

- An order for compensation for the Tenants, pursuant to section 67

The applicants requested to withdraw this issue from consideration. The Tenants' Advocate IC (the "Tenants' Advocate") advised that the Tenants are no longer pursuing the second application for compensation. In accordance with section 64 (3)(c) of the Act, I have permitted the application to be amended and this issue is withdrawn.

Issues to be Decided

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The Tenants have applied for compensation for loss incurred as a result of mold in the rental unit. In October 2022, the toilet input line broke which resulted in significant water damage to the rental unit (the "October 2022 Incident"). The work was completed partially by a restoration company and then the property owner SB (the "Property Owner") bought out the remainder of the claim and performed some of the repair work.

Prior to the Tenants moving back into the rental unit, they had concerns of mold which they brought to the attention of property manager JA (the "Property Manager"). Tenant BM advised that they noticed mold and were advised by the City of Abbotsford's Building Inspection Manager that an air quality test should be conducted. They approached the Property Manager about having this completed but were advised this was not required. To treat the mold the Property Owner used bleach and repainted the base boards where the mold was found by the Tenants.

After the Tenants obtained and paid for an air quality test the results were sent to the Property Owner and Property Manager. The air quality report revealed that mold was found in areas of the home and within the air (the "Report"). The Report does not indicate whether the cause of the mold was the October 2022 Incident or pre-existing mold. The parties agreed to a proposal to have the mold treated and the Tenants are seeking compensation for the air quality test and expenses incurred by the Tenants between February 8, 2023 to February 23, 2023 when they were out of the rental unit for the mold remediation.

Air Quality Test:

The Tenants are seeking compensation for the air quality test of \$1,260.00. The Tenants argued they felt they were being forced to move back into the rental unit and pay rent without a proper assessment of the mold. They felt they needed to get the air quality test done to show that the rental unit was unsafe. They had requested the test be done by the Landlord, but that request was denied.

The Property Manager argued neither they or the Property Owner agreed to cover this expense or consented to the Tenants having the test conducted. The Property Manager argued that the restoration company they hired for the October 2022 Incident advised them that an air quality test was not required in this case.

Hotel Stay:

The Tenants are asking for compensation of \$6,187.60 for the cost of their hotel stay between February 8, 2023 to February 23, 2023. After the Report was sent to the Landlord, the parties met to discuss a plan to address the recommendations suggested in the Report. The Tenants proposed they remain in the upper level of the rental unit while the remediation of mold took place in the other areas of the rental unit. It was communicated to the Tenants that the Property Owner would “prefer the entire home be left vacant until the remediation is complete”. The Tenants took this response to mean they needed to find other accommodations while the rental unit was being remediated.

The Property Manager argued that the Landlord never said “no” to the Tenants staying in the upper level of the rental unit. Additionally, they argued that the Tenants never communicated that they would be staying at a hotel during the remediation and that the Property Owner never agreed to cover the cost of this. The Property Manager argued that had the Tenants informed them of their plan to stay at a hotel the parties could have reached an agreement on the Tenants staying in the rental unit.

Meals:

The Tenants are also seeking compensation of \$4,140.00 for meal expenses during their hotel stay between February 8, 2023 to February 23, 2023. The hotel room did not have a kitchen and the parties had to eat out for every meal. The Tenants are requesting compensation based on the CRA Guidelines for Meal Per Diem which is \$23/meal/day/person to a maximum of \$69 per day.

The Property Manager argued the Tenants never informed them or the Property Owner in advance and did not obtain their agreement for the Landlord to cover these costs.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

Are the Tenants entitled to a Monetary Order for damage or loss under the Act, regulation or tenancy agreement?

Under section 67 of the Act, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. In this case, to prove a loss, the Tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Landlord in violation of the Act, Regulation or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenants Claims are discussed below:

1. Air Quality Test \$1,260.00

The Tenants advised the Landlord of the presence of mold in the rental unit around December 2022. The Landlord declined to get the air quality test and based this on the response they received from the remediation company. While the remediation company stated an air quality test was not necessary this was not an expert opinion that there was not mold present. Rather the remediation company's response was based on the scope of work they were initially hired for. Since they were not originally hired for mold or asbestos remediation the test is not part of their process.

I find that the Tenants have established a claim for the recovery of the air quality test. The Tenants incurred the cost of the air quality test to ensure the rental unit meet the health, safety and housing standards required by law. This is a requirement of the Landlord and based on the Report the Landlord failed to meet that standard.

As such, I award the Tenants \$1,260.00 for the air quality test.

2. Hotel \$6,187.60 / Meals \$4,140.00

According to Policy Guideline #1, a landlord is responsible for ensuring the rental unit meets "health, safety and housing standards" established by law. I find that the Landlord failed to provide a rental unit that meet that standard and the Tenants were unable to occupy the rental unit from February 8, 2023 to February 23, 2023 because of the mold, which resulted in the Tenants having to incur accommodation costs.

The Tenants provided receipts from the hotel stay which supports their request. I find the Tenants took steps to mitigate their loss by proposing a less costly solution of staying in the upper level of the rental unit, by finding a cheap accommodation and by trying to have their insurance cover the cost. The Property Manager argued that the response to the proposal was not a "no". The email from the Property Manager stated

“Regarding your request to move back into the upper portion of the home fairly immediately, The Owners would prefer the entire home be left vacant until the remediation is complete. In saying that, they would like to resolve everything the soonest time possible, even prior to this weekend.” However, the Tenants were given no other suggestions of where they should stay, and the Property Manager did not inquire any further about the Tenants accommodation during the remediation. I find that the Tenants were left with no other option but to find alternative accommodation during the mold remediation.

I award \$4,312.60, which is \$6,187.60 (cost of hotel stay) minus \$1,875.00 (15 days of rent the Tenants would have paid).

I decline to award the cost of the meals. Whether the Tenants were living in the rental unit or at the hotel they would have incurred cost for meals. Additionally, I find that the Tenants did not take steps to mitigate the loss. For example, buying pre-made items from the grocery store or having one pet friendly room for all the pets and one kitchenette room.

Are the Tenants entitled to recover the filing fee for this application from the Landlord?

As the Tenants were successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act. I authorize the Tenants to deduct \$100.00 from their next rent payment.

Conclusion

In summary, the Tenants are entitled to the following

Monetary Issue	Granted Amount
Air Quality Test	\$1,260.00
Hotel Stay from February 8, 2023 to February 23, 2023	\$4,312.60
Meals	\$0.00
Total Amount	\$5,572.60

The Tenants are provided with a Monetary Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply

with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The Tenants are entitled to deduct \$100.00 from their next rent payment for the recovery of the \$100.00 filing fee.

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: September 06, 2023

Residential Tenancy Branch