



DECISION

Introduction

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

- A Monetary Order for unpaid rent under section 67 of the Act
- Authorization to recover the filing fee for this application from the tenant under section 72 of the Act

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

- An order for compensation for monetary loss or other money owed, pursuant to section 67
- Authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord's counsel JD (the "Landlord's Counsel") advised that the Landlords are willing to pay the Tenants the \$682.29 they sought for compensation for the mould test the Tenants paid to have conducted.

As such, I award the Tenants the \$682.29 for the mould test.

Preliminary Issues

- Update Landlord's Name

Updated the Landlord's name on the Tenants' application to the legal business name.

- Service of Evidence

The Tenants argued the Landlord did not serve the evidence properly as they only received one evidence package for both Tenants and it was sent expedited mail and not registered mail. Additionally, they received 84 items and a different file number was listed, which they argue was done to intimidate them.

The Landlord's Counsel argued they sent it via registered mail, listed both Tenants on the package and that they may have inadvertently listed the Landlord's dispute number instead of the Tenant's dispute number. The Landlord's Counsel argued the Tenants received the evidence and had time to review it, as such it should be included. Additionally, the Landlord's Counsel advised there was no intention to intimidate the Tenants and the volume of evidence was needed to rebut and defend against the Tenants' claim.

I find that using expedited shipping just changes the shipping speed and is still considered registered mail.

Policy Guideline 12 states, the decision on whether a document was sufficiently served in accordance with the legislation is a decision made based on the evidence before an arbitrator in the hearing. The general objective of service of documents is so a person is aware of the evidence being used. It is further stated in Policy Guideline 12 that case law supports that the purpose of service is fulfilled once a notice has been received. While the Landlord did not serve the evidence as required by the Act, section 71(2) gives me the authority to order that a document has been sufficiently served for the purposes of the Act upon consideration of procedural fairness and prejudice to the affected party.

While the Tenants were not separately served the evidence package, the Tenants advised they received the evidence package with both their names on it 3 weeks prior to the hearing. I find that the Tenants were aware of the evidence being used by the Landlord and were given 3 weeks to review the evidence. As such, I find there is little prejudice to the Tenants or any breaches in the principles of natural justice and use the discretion afforded to me under section 71(2) of the Act to find that the Proceeding Package was sufficiently served on the Tenants.

Issues to be Decided

Is the Landlord entitled to a Monetary Order for unpaid rent?

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

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

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.

Evidence was provided showing that this tenancy began on October 1, 2019, with a monthly rent of \$2,100.00, due on first day of the month, with a security deposit in the amount of \$1,050.00. The Tenants vacated the rental unit July 30, 2021.

The Tenants are seeking compensation from the Landlord due to the basement of the rental unit being torn apart and the cost of mould test the Tenants paid for. As stated above the Landlord agreed to pay for the mould test, as such I will not deal with this issue in my analysis below.

The Landlord also filed a cross application seeking the unpaid utilities owed by the Tenants.

The Tenants advised there were two floods at the rental unit. The first occurred April 2020 and the second occurred January 2021. The second flood was the result of a crack in the foundation that was slowly leaking water into the basement of the rental unit. The Tenants argued that no mould test was ever done for the upstairs of the rental unit and they believe there was mould that was causing them to be sick.

The Tenants argued the Landlord tried to fix the basement without doing further exploration about mould. This is when the Tenants paid for a mould test to be conducted. The Tenants argued after the test indicated mould was present in the basement the Tenants had hoped the Landlord would undertake remediation, but the Landlord refused to do the proper fixing. The Tenants are seeking half of their rent back for 10 months due to the basement being torn apart and the Tenants argued the entire house was unlivable due to the mould. Tenant JG argued they avoided using the basement and would only go to the basement for 5 minutes at a time to do laundry.

The Landlord's Counsel argued the Tenants have failed to establish the 4 elements required for compensation. The Landlord's Counsel argued, the Landlord has not violated or breached the Act, regulation or tenancy agreement, as the Landlord took all reasonable steps when both leaks happened. Additionally, the Landlord's Counsel

argued the Tenants provided very little documentary evidence to support the amounts they are seeking and that the Tenants failed to minimize their loss. For example, the Landlord's Counsel argued the Tenants turned off the air exchanger which pulled air from the house and filtered in air from outside, turned off the dehumidifier that was drying out the basement after 8 days and asked the Landlord to cancel any restoration plans.

The Landlords provided evidence including, email correspondence between the property management company RPM and the Tenants and a list of steps taken by the Landlord to address both floods.

The Landlord is seeking \$1,860.30 which is the cost of the Tenants unpaid utilities. The Landlord's Counsel argued the tenancy agreement stated that utilities are not included in rent and pointed to clause 11 which stated, "utilities are not included in rent or are not paid to the landlord are the responsibility of the tenant who must apply for hook up and must maintain current payment of their utility account". The Landlord also submitted the Fortis BC bills and a letter sent to the Tenants June 30, 2020, reminding the Tenants to set up their Fortis BC account and providing a Fortis BC bill. The Landlord's Counsel argued the Landlords paid for these Fortis BC bills and have not been reimbursed.

The Tenants argued that since clause 20 in the addendum stated "the electric and gas fireplace are for occasional use only and are not to be used as the primary source of heat" this means Fortis BC was included in rent since a landlord cannot limit something a tenant pays for. The Tenants also argued the Landlord's son said Fortis BC was included in rent. The Tenants did not receive this in writing and advised it was a verbal conversation that took place.

Analysis

Are the Tenant 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 Landlords have provided insufficient evidence to support that any damage or loss existed. There is nothing to show that the basement was torn up or that there was mould present in the entire rental unit, which made the entire rental unit unlivable. No photos were submitted to support that the basement was torn up. The Tenants argued there is no evidence to support that mould did not exist in the entire rental unit; however, the obligation is on the Tenants to substantiate their claims.

Furthermore, the Tenants have failed to establish that the loss or damage was the result of the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement. Based on the ample evidence provided by the Landlord, they have established that they acted reasonably to address the problems after each flood and took reasonable steps to minimize any impact on the Tenants. For example, the email outlining the steps taken after the second flood.

Even if the Tenants were successful in establishing the other elements, the Tenants have also failed to establish that they took steps to mitigate any loss. For example, on January 14, 2021, the Tenants made the choice to turn off the dehumidifier 8 days after it was set up to dry the basement and on March 11, 2021, they asked the Landlord to cancel any remediation work. I find that these examples support that the Tenants did not take steps to mitigate or minimize the loss or damage.

Based on the above, I decline to award the Tenants compensation for half their rent for 10 months.

Is the Landlord entitled to a Monetary Order for Unpaid Utilities?

The tenancy agreement stated that Fortis BC was not included in rent and the Tenants were required to set up an account with Fortis BC. While the Tenants argued the Landlord's son advised them Fortis BC was included in rent, they have no evidence to support this. Additionally, I find that clause 20 in the addendum does not imply or indicate that Fortis BC is included in rent. Furthermore, the letter sent to the Tenants June 30, 2020, reiterated the Tenants had an obligation to set up a Fortis BC account. As such, I find that the Tenants breached the tenancy agreement by not setting up a Fortis BC account and the Landlord suffered a loss by having to pay the Tenants Fortis BC bills.

Section 67 of the Act states that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Therefore, I find the Landlord is entitled to a Monetary Order for unpaid utilities under section 67 of the Act, in the amount of \$1,860.30.

Is the Landlord or Tenants entitled to recover the filing fee for this application from the other Party?

As the Landlord was successful and the Tenants were partly successful, I find that the recovery of the filing fees cancels each other out. Neither party owes the other for the filing fee.

Conclusion

I will offset the amounts owed by each party.

I grant the Landlord a Monetary Order in the amount of **\$1,178.01** under the following terms:

Monetary Issue	Granted Amount
a Monetary Order for unpaid utilities under section 67 of the Act	\$1,860.30
a Monetary Order for the Tenants for compensation for the mould test	-\$682.29
Total Amount	\$1,178.01

The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: November 3, 2023

Residential Tenancy Branch