



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDL-S, LRSD, FFL; MNDCT, FFT**

Introduction

This hearing dealt with an application by the landlord under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.
- Authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 72 of the *Act*.
- An order requiring the tenant to reimburse the landlord for the filing fee pursuant to section 72.

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*.

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Issue(s) to be Decided

Is the landlord entitled to the relief requested – an award for damages, authorization to retain the tenant's security deposit, and reimbursement of the filing fee?

Is the tenant entitled to the relief requested – an award for damages and reimbursement of the filing fee?

Preliminary Issue

J.H. attended and stated as follows. She was attending on behalf of the landlord D.W. J.H. stated D.W. was out of the country because of the death of a family member on April 20, 2024. J.H. asked for an adjournment until the landlord returned to the country. J.H. did not submit an authorization signed by the landlord. J.H. acknowledged she did not know anything about the dispute.

The tenant objected to the adjournment for the following reasons. The hearing had already been adjourned once at the request of the landlord because of the same family death which occurred 6 weeks before today's hearing. The landlord had ample opportunity to request a further postponement which he had not done. The matter was stressful, time consuming and expensive for the tenant. They did not want another delay

The tenant described the stress and difficulty in attempting to get the landlord to return their deposits after they obtained an RTB Monetary Order in a previous hearing, the number for which is referenced on the first page.

The tenant said there was no possibility of settlement of this claim. The tenant requested the matter proceed.

In considering the landlord's application for an adjournment, I took into consideration the criteria established in Rule 7.9 of the RTB *Rules*, which includes the following:

- the oral or written submissions of the parties.
- the likelihood of the adjournment resulting in a resolution.
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party.

I accept the tenant's testimony about the time, expenses and stress involved with the tenancy given there was a previous Order with which the landlord did not fully comply.

The landlord has had ample time to request a second adjournment in advance of the hearing and has not done so. The landlord has not provided a reasonable explanation for the requested adjournment.

I accept the tenant's uncontradicted evidence that there is no likelihood of settlement, and they are inconvenienced by further stress and costly delays.

It is the landlord's obligation to prepare for the hearing and the landlord has failed to do so. There is no possibility of settlement.

Accordingly, after considering the Rules and the testimony of the parties, I denied the landlord's application for an adjournment.

The hearing continued.

Preliminary Issue: Agent and Dismissal of Landlord's Application

The issue arose of authorization to J.H. to act for the landlord D.W.

As stated above, J.H. stated she is the agent of the Landlord who did not attend the hearing. J.H. acknowledged she had no knowledge of the dispute. She stated she worked for D.W. in one of his businesses.

J.H. did not submit written authorization from D.W. to act for him in today's hearing.

Rule 6.7 of the Rules of Court states that a party may be represented or assisted by an agent.

Rule 6.8 provides that the arbitrator may require an agent to provide proof of their appointment to represent a party and may adjourn a dispute resolution hearing for this purpose.

Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

In the absence of any authorization from the Landlord, I find that J.H. has not established that she is the agent of the Landlord. I do not accept her unsupported assertion that she is the Landlord's agent. I have denied the request for an adjournment.

Rule 7.3 states that if a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Further to Rule 7.3, I find the Landlord or their authorized agent have failed to attend the hearing. The Tenant has attended. I find no evidence on behalf of the Landlord was submitted. I therefore dismiss the landlord's application without leave to reapply.

Background and Evidence

The tenant submitted considerable evidence. I do not refer to all the evidence.

Tenancy

The tenant testified the tenancy began September 1, 2022 and ended July 1, 2023. Rent was \$2,500.00 and the deposits were \$2,500.00.

In a previous proceeding referenced on the first page, the tenant obtained a Monetary Order against the landlord for the return of the deposits.

Tenant's Evidence

The tenant testified as follows.

No condition inspection reports on move-in or move-out took place.

The tenant informed the landlord on September 14, 2022 that there was mold in the apartment. This was two weeks after they moved in.

The landlord took no steps to remediate the mold. The mold proliferated throughout the tenancy and caused serious concern to the tenant who believed the apartment was an unhealthy environment causing illness.

The tenant stated that conditions in the unit made it uninhabitable. The ventilation system was old and inadequate. The windows were original to construction some decades ago, leaked and required repairs or replacement.

The tenant notified the landlord many times of the unacceptable conditions in the unit. For example, the tenant submitted a copy of a letter dated February 5, 2024 from them to the landlord. With the letter, the tenant enclosed copies of many text messages about the mold and ventilation.

The tenant submitted supporting photographs, documents and correspondence with the landlord.

The tenant was eventually forced to move out because the landlord took inadequate steps to repair the unit. The tenant vacated after 7 months because of the poor state of repair and unacceptable conditions in the unit and the refusal of the landlord to carry out repairs.

The tenant seeks \$2,500.00 damages and reimbursement of the filing fee.

Analysis

Under section 32 of the Act, a landlord must provide and maintain 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. The landlord's obligations apply whether the tenant knew of a breach by the landlord at the beginning of the tenancy agreement.

These obligations are discussed in *RTB Policy Guideline 1. Landlord & Tenant – Responsibility for Residential Premises*. The landlord is responsible for regular repairs and maintenance. The tenant is not responsible for reasonable wear and tear.

Sections 7, 65 and 67 address compensation and provide that if a landlord does not comply with this Act, the regulations or their tenancy agreement, they must compensate the other for damage or loss that results. The tenant must do whatever is reasonable to minimize the damage or loss. The director may determine the amount of, and order that party to pay, compensation to the other party.

In this case, I accept the tenant's credible evidence and find the landlord did not provide the residential property in a state of repair complying with health, safety and housing standards required by law. The tenant informed the landlord of the problems with the unit, particularly mold. The landlord did not take adequate steps to address, repair or remediate in violation of their lawful obligations.

There has been an infraction by the landlord of the tenant's legal rights. The tenant took all reasonable steps to mitigate loss.

I am satisfied that the tenant incurred losses based on the tenant's credible evidence and supporting photographs. However, I am unable to determine the amount of the tenant's damages.

I have referenced *RTB Policy Guideline 16: Compensation for Damage or Loss*. This Guideline states that an award may be made where there has been an infraction of a legal right, and the applicant has not proven the extent of the loss. I may award nominal damages.

I find this is an appropriate case for the award of nominal damages.

I award the tenant \$1,000.00 and \$100.00 for reimbursement of the filing fee for a total Monetary Order of \$1,100.00.

Conclusion

I dismiss the landlord's application without leave to reapply.

I grant the tenant a Monetary Order of \$1,100.00. This Order may be filed and enforced in the courts of the Province of BC.

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: June 11, 2024

Residential Tenancy Branch