Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Decision

Introduction

Dispute codes: MNDCT, FFT (Tenant's Application) and MNDL, FFL (Landlords' Application).

This hearing was convened under the *Residential Tenancy Act* (The ***Act***) in response to cross applications from the parties.

The Tenant filed their application on December 5, 2024. The Tenant seeks compensation for monetary losses pursuant to section 67 of the *Act*, as well as their filing fee, to be collected from the Landlords, pursuant to section 72 of the *Act*.

The Landlords filed their application on January 28, 2025. The Landlords seek compensation for monetary losses, pursuant to section 67 of the *Act*, as well as their filing fee, to be collected from the Tenant, pursuant to section 72 of the *Act*.

Tenant RS and Landlords LH and GH all attended the hearing.

Service of Records

- *Tenant's records to the Landlords*

The Tenant submitted a signed proof of service form indicating that they served their application and documentary evidence, to the Landlords, by leaving copies of their records on the doorsteps of the Landlords' residence. I note that this is not a valid form of service under section 89 of the *Act*. However, the Landlords testified that they were served with the Tenant's application and all the Tenant's documentary evidence, except for the Tenant's monetary order worksheet, in person. The Tenant could not prove service of their monetary order worksheet to the Landlords, and I will address this matter under the analysis section of my decision.

Based on the above, if the Tenant served the Landlords by leaving copies of their records on the Landlords' doorsteps, I find, pursuant to section 71(2)(c) of the *Act*, that, for the purposes of the *Act*, the Tenant sufficiently served their records to the Landlords, because the Landlords acknowledged receipt of the Tenant's records.

In the alternative, if the Tenant served their records in person, then I find the Tenant served their application and documentary evidence, to the Landlords, in person, in accordance with sections 88 and 89 of the *Act*.

- *Landlord's records to the Tenant*

The Landlords submitted evidence showing they served the Tenant with their application and documentary evidence, by registered mail. I have copied the associated tracking number on the cover page of my decision.

The Tenant acknowledged receipt of the Landlords' records, by registered mail, pursuant to which I find the Landlords served the Tenant with their records in accordance with section 88 of the *Act*.

Preliminary Matter: GH's Name

Prior to my amendment, the Tenant had named GH without including GH's complete name. GH provided their complete name, which is the same name that is included in the parties' tenancy agreement.

Section 64(3)(c) of the *Act* states that, subject to the *Rules of Procedure*, the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

I find it appropriate and necessary to amend the Tenant's application to correct GH's name. After the hearing, I amended the Tenant's application and corrected GH's name. The style of cause on the cover page of my decision reflects my amendment.

Background Facts, Evidence, and Preliminary Findings

I have considered the parties' testimonies and submitted records, but I will refer only to what I find relevant to my decision.

The parties agreed that:

- This tenancy began on November 1, 2022, and it ended on June 16, 2024.
- At the end of the tenancy, the monthly rent was $1,530.00.
- The Landlords are not holding the Tenant's security deposit, and the matter was conclusively dealt with by the parties on or after the end of this tenancy.
- On November 11, 2022, the parties completed a start of tenancy condition inspection report of the Rental Unit, together (the term "Rental Unit" is defined on the cover page of my decision).
- The parties completed several other inspection reports of the Rental Unit during the term of this tenancy.

Both parties submitted incomplete copies of the start of tenancy condition inspection report.

Landlord LH testified that the parties completed interim condition inspection reports of the Rental Unit on March 21, 2023, and on February 7, 2024.

The Tenant submitted a copy of an inspection report that appears to have been completed on two different dates. I can see the following hand-written dates on top of page one of the submitted report: “April 15, 2024” and “June 16/24 inspecti [*sic*]”.

In their application, the Tenant is seeking compensation from the Landlords, in the amount of $18,000.00, for the following:

1) Failure by landlord to provide a legal and safe dwelling which resulted in health issues due to mold exposure (attached are summaries from two independent home inspections which note several structural issues with the rental property (full reports are available upon request) + newspaper clipping confirming the CVRD by-law office considers the rental property to be illegal.)

2) Extortion and intimidation by landlords: (attached is a copy of the letter from landlords’ lawyer giving us the option to leave the premises with a buyout of $6,120.00 (monthly rent of $1,530.00 x 4 months) or else they would be pursuing us for the cost of mold remediation of the illegal property.)

The Tenant submitted a Monetary Order Worksheet, signed by the Tenant on December 9, 2024 (the **Tenant’s MOW**). In the Tenant’s MOW, I can see the following claims (copied verbatim):

“(1) HEALth + SAfETy HARRASMENT, AND FRAUD. (MAKING US PAY DAMAGES)” [*sic*]
“(2) ALL in EViDENCE PACKAGE.” [*sic*]
“(3) MOST OF LOST ARiTICLES DESTROyED BY MOLD. No ReciEPTS FoR HEIRLom ThinGS” [*sic*]

At the hearing, the Landlords testified that the never received the Tenant’s MOW. The Tenant testified that they cannot recall if they served the Tenant’s MOW to the Landlords.

The Landlords, in their application, are seeking $6,547.09 from the Tenant from the following: “Hazmat testing Mold remediation Insulation, vapor barrier and Drywall installation Baseboard material Tenant temporary accommodation”. The Landlords also submitted a signed monetary order worksheet, dated January 28, 2025 (the **Landlords’ MOW**). In the Landlords’ MOW, I can see the following claims:

No.	Receipt/Est. From	For	Amount
1	AEHSSI	“Hazmat Survey & Testing”	$787.50
2	PPHL	“Mold Remediation”	$4,094.08
3	RCGD	“Drywall Installation”	$1,102.50

4	HD	“Baseboard”	$63.41
5	Landlords	“Temporary Accommodation”	$500.00

The parties’ testimonies in relation to the above claims are outlined in the “Analysis” section of my decision, below.

In addition to the above claims, the parties are seeking the recovery of their $100.00 filing fees in relation to their respective application.

Analysis

When two parties to a dispute provide equally possible accounts of events or circumstances related to a dispute, the party making the claim has the responsibility to provide evidence over and above their testimony to prove their claim.

The standard of proof in this tribunal is balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

- *Security deposit*

The parties affirmed that they have dealt with the security deposit in this tenancy on their own; consequently, it is not necessary for me to make any orders in relation to the Tenant’s security deposit.

- *Parties’ claims for compensation resulting from damage or loss*

Section 7 of the *Act* states that if a party does not comply with the *Act*, the *Regulations* or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results and that the party who claims compensation must minimize the losses.

Section 67 of the *Act* allows a monetary order to be awarded for damage or loss when a party does not comply with the *Act*. 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.

The Residential Tenancy Branch (the **Branch**) Policy Guideline 16 outlines the criteria to be applied when determining whether compensation for a breach of the *Act* or the tenancy agreement is due. It states that the applicant must prove that (1) the respondent failed to comply with the *Act* or the tenancy agreement; (2) the applicant suffered a loss resulting from the respondent’s noncompliance; (3) the applicant proves the amount of the loss; and (4) that they reasonably minimized the losses suffered.

At the hearing, the Tenant testified that their submitted “inspection reports tell the whole story of the house” and that “the house should be condemned.”

On several occasions I directed the Tenant to provide submissions in relation to their claim, but the Tenant advised that I should have reviewed their submitted inspection reports prior to the hearing.

The Tenant testified that their $18,000.00 claim is 12 months' rent abatement, notwithstanding the fact that in their monetary order worksheet, they appear to have made a claim for personal possessions (without providing a value for the claim).

The Landlords submitted a written statement in response to the Tenant's application, wherein they stated: "$18,000 Monetary Loss or money owed[.] The [Tenant] has provided no evidence that he has suffered any monetary loss. The [Tenant] has also not provided any evidence that he suffered any health issues as a result of his claim."

Section 59(2)(b) of the *Act* states that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. Section 59(5)(c) of the *Act* states that the director may refuse to accept an application for dispute resolution if the application does not comply with subsection 59(2)(b).

Procedural fairness demands that I first turn my mind to the manner in which the Tenant filed their application and Landlord GH's testimony that they were never served with the Tenant's MOW. Based on the Tenant's testimony at the hearing, I find the Tenant failed to prove that they served the Tenant's MOW to the Landlords, as is required by the Branch's *Rules of Procedure*.

At the hearing, I read the contents of the Tenant's MOW on the record and GH testified that they are willing to continue with the hearing, notwithstanding the lack of service. I find, consideration of the Tenant's MOW, would not be prejudicial to the Landlords, because in their monetary order worksheet, the Tenant's only viable claim is the same claim that they made in their application, which the Landlords acknowledged they were served with (i.e. "[f]ailure by landlord to provide a legal and safe dwelling which resulted in health issues due to mold exposure" and "[e]xtortion and intimidation by landlords"). In the Tenant's MOW, I cannot see any itemization of the Tenant's claim (I can see the same $18,000.00 global claim that is included in the Tenant's application), and, as the Tenant stated in the Tenant's MOW, the Tenant does not have any invoices/receipts related to their personal possessions, nor did they, at the hearing, or in their documentary evidence, provide evidence of what personal possessions they allege to have lost, what the values of those items were, or any other pertinent information. At the hearing, the Tenant provided testimony that the amount of compensation they are seeking is equal to approximately 12 months' rent.

I find the Tenant's application provides full particulars with respect to an $18,000.00 compensation claim, pursuant to section 67 of the *Act*, for "[f]ailure by landlord to provide a legal and safe dwelling which resulted in health issues due to mold exposure" and "[e]xtortion and intimidation by landlords".

The Tenant submitted a four-page written statement, which I reviewed prior to making my decision. In this written statement, the Tenant states: “[a]lmost a year Dec 2022-Nov 2023 of constant flu-like symptoms which are the same as exposure to mould symptoms. There were days I couldn’t get out of bed.”

Landlord GH testified that the Tenant notified them of mould “in his spare room” in November 2023. In their written statement, the Tenant stated that they discovered mould “in den and bedroom” and notified the Landlord of the same on November 22, 2023. The Tenant further stated that the Landlords did nothing, for 78 days, except to put a dehumidifier in the Rental Unit. GH testified that in November 2023, they attended the Rental Unit, and they discovered the unit filled, “floor to ceiling”, with the Tenant’s personal possessions. GH testified that they placed a dehumidifier inside the Rental Unit.

At the hearing, GH testified that they next visited the Rental Unit for an inspection on February 7, 2024. The Tenant disputed GH’s testimony and testified that the Landlords next visited the Rental Unit in March 2024. However, in their written statement, the Tenant stated that Landlords next inspected the Rental Unit on February 7, 2024 (as testified to by GH at the hearing).

At the hearing, GH testified during their February 7, 2024, inspection of the Rental Unit, they discovered mould presence on one of the Rental Unit’s walls, where the Tenant had placed a mattress against the affected wall. GH testified that on the same date, they contacted PPHL, which sent an agent to inspect the Rental Unit. The Landlord referred to two pictures of the Rental Unit’s bedroom wall and the Rental Unit’s “spare room”, which they testified were taken on February 7, 2024. I can see heavy mould presence on walls of both rooms.

GH testified that PPHL informed them that they can start work within two weeks and recommended that the Rental Unit be decluttered in the interim.

GH testified that while the PPHL agent was at the Rental Unit on February 7, 2024, the Tenant argued with the agent with respect to the agent’s recommendations.

GH testified that they offered to help the Tenant move their bed into the Rental Unit’s living room while the parties waited for PPHL, but the Tenant refused the Landlords’ assistance and slept in the affected bedroom in the interim.

GH testified that they paid the Tenant to vacate the Rental Unit (accommodation costs) on February 26, 2024, until February 28, 2024, while repairs were being conducted. In their written statement, the Tenant stated that the Landlords covered the cost of hotels and meals during the period of repairs in February 2024.

In their written statement, the Tenant stated that the Landlord’s contractor, from PPHL, attended the Rental Unit on February 8, 2024. The Tenant further stated that:

> The expert was there an hour and half and did not acknowledge any structural issues with the dwelling including the moisture plus the inadequate bathroom and kitchen fans. We were told that we had contributed to the mold issue due to the volume of personal items in the dwelling. We were to be informed as soon as possible about the type of mold and about the possibility of asbestos in the walls. The existence of asbestos was confirmed on Feb 12, 2024, by [AEHSSI].

In their written statement, the Tenant stated that on February 12, 2024, they tested the Rental Unit's bathroom fan to prove it was dysfunctional, and on February 13, 2024, the Landlords "advised that they would replace the bathroom which they did but improperly."

In their written statement, the Tenant stated that the Landlords inspected the Rental Unit on March 6, 2024, and on March 13, 2024.

At the hearing, the Landlords testified that the Landlords inspected the Rental Unit on March 6, 2024, and on March 13, 2024, and because the Tenant had not decluttered the Rental Unit, they offered the Tenant compensation in exchange for a mutual end to the tenancy, but the Tenant declined the Landlords' offer.

In their written statement, the Tenant stated that the Tenant contacted FHI to inspect the Rental Unit, which was completed on April 11, 2024. The Tenant also stated that a second inspection of the Rental Unit was completed by DHI on April 19, 2024. At the hearing, the Tenant did not refer to any specific pages or findings in the two reports and instead advised that I read the two reports. The Tenant submitted copies of both reports, which I reviewed prior to making my decision. In FHI's April 11, 2024, inspection report, I can see the following:

RECOMMENDATIONS \ General

Condition: • The building occupant (tenant) has commissioned this report to determine the cause of apparent high moisture in building and has shown photos of previously remediated walls and furniture affected by organic growth (ie, mould). Musty odours were present upon entering the home, as well as in the rear attached shop area. Several moisture related conditions were noted in the crawlspace and attic. The primary cause appears to be a missing vapour barrier over the dirt crawlspace floor, as well as evidence of historically high moisture entering from the ground and foundation walls. A vapour barrier should be installed as soon as possible to help mitigate these conditions. Please note that if substantial water is collecting below the home during heavy rains, further action by a drainage company may be required, such as damp-proofing, sump pump, and upgraded drainage and/or perimeter drains. The area should be monitored during the rainy season to assess severity of moisture ingress on crawlspace floor and further evaluated as necessary.
The occupant has been advised by the owner that storage should be subsequently kept away from walls to prevent future mould growth. This action is reasonable, given the high moisture concerns noted and that exterior walls appear to be poorly insulated. The building however (as well as furniture and the occupants) will still be susceptible to mould-related issues if the crawlspace issues are not addressed. Dehumidifiers should not be considered an effective solution at reducing building moisture and may also exacerbate the problem by drawing moisture from the crawlspace into the home.

This concludes the Summary section.

In the DHI inspection report, dated April 19, 2024, I can see the following findings:

- "Attic showed areas of discoloration and possible mold growth".

- "there is no vapor [*sic*] barrier beneath the flooring" in the crawlspace of the Rental Unit.
- "There is also no vapour barrier in the crawlspace which is allowing moisture from the ground to enter the home from below."

The Landlords submitted pictures of the Rental Unit, which they testified were taken in March 2024, which I reviewed during and after the hearing.

The Landlords submitted a copy of a without prejudice letter, drafted by the Landlords' counsel, dated March 25, 2024, and addressed to the Tenant (the **Lawyer's Letter**), which appeared to be the source of the Tenant's extortion and intimidation claim. I reviewed this letter prior to making my decision.

With respect to the Tenant's $18,000.00 claim against the Landlords, I find that the Tenant failed to prove a loss in the amount of $18,000.00, or in any other amount. I make this finding for the reasons that follow.

The Tenant failed to establish that they suffered "health issues due to mold exposure". In their written statement, they cite "flu-like symptoms". At the hearing the Tenant testified that they are elderly. Even if I accept the Tenant's testimony that they had flu-like symptoms in 2022/2023, it is unclear to me on what basis I can make the finding, on a balance of probabilities, that the Tenant's ailment was the result of mould exposure. The Tenant did not submit any medical records or witness testimony to prove they suffered ailments due to mould.

The Tenant did not submit any invoices or evidence of personal possessions which they say they lost. In fact, beyond stating that one of their saws became rusty, the Tenant did not testify what items they allege to have lost.

I do not find the Lawyer's Letter to be tantamount to "[e]xtortion and intimidation" as claimed by the Tenant.

The Branch's Policy Guideline 16, with respect to damage or loss, states that damage or loss may be claimed for loss of quiet enjoyment. It is unclear whether the Tenant's compensation claim is based on a claim for a loss of quiet enjoyment, but if it is, then I find the Tenant failed to prove that the Landlords breached the Tenant's entitlement to quiet enjoyment, under section 28 of the *Act*. The Branch's Policy Guideline 6, with respect to a tenant's right to quiet enjoyment, provides the following:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

Based on the evidence put before me, I find the Landlords became aware of the general presence of mould in the Rental Unit on November 22, 2023 (when the Tenant notified the Landlords). The Landlords took immediate action by inspecting the Rental Unit's spare room and placing a dehumidifier in the affected area. Neither party submitted pictures of the spare bedroom from late-November 2023. Based on the evidence before me, I find that on or about November 22, 2023, the Landlords were unaware of the extent of the problem, because of the number of items blocking the Rental Unit's walls, including a mattress that was placed in the Rental Unit's bedroom, covering heavy mould presence. To be clear, I am not making any findings that the Tenant was a "hoarder". The Tenant did not refer to a copy of any notice in writing they sent to the Landlords from November 2023, which would clarify the nature of their complaint. In their written statement, the Landlords stated that on November 22, 2023, the Tenant "complained that there was mold on items being stored in the spare room in the dwelling".

Based on the evidence before me, it was the Landlords that initiated the next inspection, in early February 2024, at which time they discovered mould behind a mattress in the Rental Unit's bedroom. I find the Landlords took immediate steps by hiring a contractor to complete repairs. I find the Landlords took reasonable steps to correct the issues.

During the period of repairs, when the Tenant lost access to a part or all of the Rental Unit, the Landlords paid the Tenant's hotels and meals, as admitted to by the Tenant.

Based on all the above, I find the Tenant failed to prove a loss in the amount of $18,000.00. Consequently, their claim is dismissed, without leave to reapply.

Turning my mind to the Landlords' claim, I find the Landlords failed to prove the Tenant contravened the *Act*, the tenancy agreement, or the *Residential Tenancy Regulation* and for that reason, I also dismiss the Landlords' application, without leave to reapply. I make the foregoing finding for the reasons that follow.

The Landlords blame the Tenant's personal possessions for the mould problem. However, the Tenant produced the findings of two home inspectors. Based on my review of the inspectors' findings (a portion of which I copied above), I find that the cause of mould in the Rental Unit was missing vapour barrier(s) and inadequate drainage, not the Tenant's personal possessions, even if the Tenant's personal possessions exacerbated the problem. In fact, in the FHI inspection report, the inspector addresses this exact issue by calling the Landlords' recommendation that items be placed away from walls "reasonable", with the caveat that: "[t]he building however (as well as furniture and the occupants) will still be susceptible to mould-related issues if the crawlspace issues are not addressed."

For clarity, I find the Landlords also failed to prove a contravention with respect to additional costs that may have incurred because of the Tenant potentially exacerbating the problem. I make this finding because the evidence put before me by the Landlords was in relation to a claim for compensation for repairs, due to mould, caused entirely by the Tenant.

Consequently, the Landlords' claim is dismissed, without leave to reapply.

- *Parties' claims for filing fees*

Both parties claimed their filing fees, to be collected from their counterparty. As neither party was successful, I dismiss both claims, without leave to reapply.

The filing fee is a discretionary award issued by an arbitrator, pursuant to section 72 of the *Act*, usually after a hearing is held and the applicant is successful on the merits of the application.

Conclusion

Both parties' applications are dismissed, in their 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: February 25, 2025

Residential Tenancy Branch