



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The Tenant and her witnesses gave affirmed testimony at the Hearing.

Preliminary Matters

The Tenant testified that on May 17, 2012, she mailed the Notice of Hearing documents, by courier. The address where the Tenant sent the documents is the same address that the Landlord provided on a Notice to End Tenancy for Landlord Use issued September 19, 2011.

The Tenant testified that the Notice of Hearing documents were returned to her on June 11, 2012. She stated that the envelope had obviously been opened and re-taped before it was returned.

Based on the Tenant's affirmed testimony and the documentary evidence, I am satisfied that the Landlord was sufficiently served with the Notice of Hearing documents pursuant to the provisions of Section 71(2)(c) of the Act. Despite being served with the Notice of Hearing documents, the Landlord did not sign into the teleconference and the Hearing continued in his absence.

Issues to be Decided

- Is the Tenant entitled to compensation for loss of her personal property pursuant to the provisions of Section 67 of the Act?

Background and Evidence

The Tenant provided the following testimony:

There was no written tenancy agreement with respect to this tenancy. Monthly rent was \$1,300.00 initially, but was reduced to \$1,000.00 for the last year of the tenancy. The tenancy began in June, 2005 and ended November 30, 2011, as a result of a Two Month Notice to End Tenancy for Landlord's Use because the rental unit was sold and the new purchasers required vacant possession. The Landlord did not pay the Tenant compensation in the equivalent of one month's rent, as required by the Act.

In 2007, the Tenant advised the Landlord that she had noticed mould in the rental unit. The Landlord told her that he could not afford repairs, so he just painted over it. The furnace was not working properly so the Tenant had to purchase wood to heat the rental unit. There was a chimney fire in the rental unit which caused smoke damage to the rental unit and the Tenant's possessions. The Landlord told the Tenant to purchase "magic erasers" for cleaning.

The Landlord was a friend of the Tenant and her husband. After the Tenant and her husband separated, the Landlord attempted to evict her and her son. The Landlord's attempt was unsuccessful because he had no grounds to evict them.

The Tenant first told the Landlord about the mould travelling across the ceilings in the rental unit in 2008. The Landlord simply covered over the mould and did not do required repairs in order to address the mould problem. In 2008, the Tenant had to close off one of the bathrooms and the den because the rooms were unlivable.

On November 14, 2012, the Tenant had a professional house inspection done at the rental unit. The Inspector found moisture in the drywall and insulation of the attic; mould on the walls and ceilings throughout the house; water damage and cracking in several walls and ceiling throughout the house; major water damage at the front door entrance; rodent feces in the attic; and a deceased rodent in the attic. The Inspector sent samples of the mould to a lab for analysis. The lab found *stachybotrys chartarum* and *aspergillus fumigates* in the sample drywall pieces.

Based on the lab findings, the Inspector made the following recommendations:

- that there be an invasive inspection by a structural engineer to determine the extent of the water damage;
- that the client review the Health Canada web site for their studies on various moulds;
- that the client confirm City permits for additions to the house, structural and electrical; and
- that the client have a company specializing in mould remediation review and recommend procedures to clean up the house.

A public health officer came to the rental unit and advised the Tenant that she would have to abandon anything that was not completely sealed, including electronics, because the spores could be inside the electronics and be transferred to her new home. The Tenant was able to salvage some things with bleach and warm water, but had to leave her fridge, tv, computer and other electronics. The Tenant has replaced the items that she had to leave behind with similar items. The Tenant provided receipts in evidence.

The Tenant seeks the following compensation:

Sony 32" TV	\$409.75
Moving expenses: packing materials	\$32.95
Moving expenses: van rental	\$128.82
Moving expenses: van rental	\$107.24
Fridge, 18.2 cf	\$677.94
Clothes	\$412.21
Cost to clean clothes that were moved	\$837.00
Miscellaneous household items	\$364.51
Microwave	\$391.99
Vacuum, dvd player	\$184.31
Computer, printer, hard drive	\$855.18
Linens	\$1,080.80
Sanitization of furniture	\$517.43
Bedroom and living room furniture	\$6,419.96
Cost of home inspection	\$400.00
Compensation for last month's rent	\$1,000.00
TOTAL CLAIM	\$14,330.99

The Tenant's witness SB gave the following testimony:

He completed the building inspection in November, 2011. There was rot in the fascia board, wood trim and floor of the house. The south wall was covered in mould. The roof and the walls were all compromised. In his professional opinion, it would have taken at least 6 months for the moisture to cause the damage that he saw.

He sent samples of drywall to a qualified lab for testing, which identified harmful bacteria.

He advised the Tenant that she should move away until the rental unit was remediated and the air quality in the rental unit was improved.

The Tenant's witness PH gave the following testimony:

The witness is a friend of the Tenant's. She kept her horse at the stables on the rental property and visited the Tenant daily. She saw mould throughout the house, first noticing it in one of the bathrooms in 2008. The bathroom and a small bedroom were sealed off from the rest of the house in 2008 because of moisture.

The Tenant was her care giver after the witness broke her neck in May, 2010. She stayed overnight at the rental unit 2 days a week for six months after her injury. She has asthma and noticed that it got bad when she stayed in the rental unit overnight. She did not realize how much mould there was in the room where she stayed until she helped the Tenant move, when the furniture was gone.

Analysis

Section 51(1) of the Act provides that a Tenant who receives a Notice to End Tenancy for Landlord's Use is entitled to receive compensation in the equivalent of one month's rent. The Tenant provided a copy of the Notice and therefore I am satisfied that she received the Notice. Based on the undisputed testimony of the Tenant, I accept that the Landlord did not give the Tenant the compensation she was due under Section 51(1). I find that the Tenant is entitled to a monetary award in the amount of **\$1,000.00** for this portion of her application.

Section 67 of the Act states:

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

This is the Tenant's claim for damage or loss under the Act and therefore the Tenant has the burden of proof to establish her claim on the civil standard, the balance of probabilities.

To prove a loss and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

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,

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.

Section 32 of the Act requires a landlord to provide and maintain a rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law. Based on the house inspector's report, the lab results, and the undisputed testimony of the Tenant and her witnesses, I am satisfied that the Landlord did not comply with Section 32 of the Act and that the Tenant suffered a loss as a result. I find that the Tenant is entitled to recover the cost of the report and lab findings in the amount of **\$400.00**.

I decline to award the Tenant compensation for her moving costs. On the balance of probabilities, I find that the Tenant ultimately moved as a result of a Notice to End Tenancy for Landlord's Use and that compensation under Section 51(1) of the Act is sufficient. This portion of her claim in the amount of \$269.01 is dismissed.

With respect to the remainder of the Tenant's claim, I award the Tenant a nominal amount of **\$400.00**. I provide this monetary award in recognition that the Tenant suffered a loss. However, I decline to award the Tenant the \$12,661.98 she has claimed for the following reasons:

- I find that the Tenant did not take reasonable steps to mitigate or minimize her loss. The Tenant discovered mould and dampness in 2007, but did not file an application seeking an Order that the Landlord comply with the Act. In addition, the Tenant did not have insurance. The Tenant did not provide evidence that tenant's insurance, if she had it, would not have covered loss of her possessions.
- I find that the Tenant has been compensated in the form of a rent reduction of \$300.00 per month for the last year of the tenancy.
- The Tenant provided no evidence of the age of the furniture and electronics that she replaced and therefore has not provided the actual amount required to compensate for her loss. For example, a four year old television or a 6 year old refrigerator is less valuable than a new one.
- The Tenant provided insufficient evidence that it was dangerous to move the electronics into her new home (for example an Affidavit of the Public Health Officer).

The Tenant has been partially successful in her application and I find that she is entitled to recover half of the filing fee, in the amount of **\$50.00**, from the Landlord.

Conclusion

I hereby grant the Tenant a Monetary Order in the amount of **\$1,850.00** for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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 *Residential Tenancy Act*.

Dated: August 03, 2012.

Residential Tenancy Branch