Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with a tenant's application for a Monetary Order for return of double the security deposit and compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

I heard that some of the tenants' evidence was omitted from hearing packages sent to the landlord and the landlord's agent. The tenants sent the missing pages to the landlord's agent in the days preceding this hearing. The landlord was agreeable to accepting the late evidence and proceeding with the hearing as scheduled. Accordingly, I accepted all of the evidence served upon the Residential Tenancy Branch from both parties and I proceeded to hear the dispute.

Issue(s) to be Decided

1. Are the tenants entitled to return of double the security deposit?
2. Have the tenants established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement?

Background and Evidence

The month-to-month tenancy commenced July 1, 2011 and the tenants paid a $475.00 security deposit. The tenants were required to pay rent of $950.00 on the 1st day of every month.

The landlord did not prepare a condition inspection report at the beginning of the tenancy. Rather, the landlord provided the tenants with a checklist to complete and

return to the landlord, which they did (herein referred to as “the checklist”). The tenants submitted a copy of the checklist and the landlord submitted the original as evidence.

On February 14, 2012 the tenants gave written notice to end the tenancy. On February 29, 2012 the tenants returned possession of the rental unit to the landlord’s agent. A move-out inspection report was not prepared by the landlord’s agent; however, the tenants prepared a document in an attempt to record the condition of the property at the end of the tenancy and provide a forwarding address. The landlord issued a cheque for return of the entire security deposit on March 9, 2012 and mailed it to the tenants.

Double security deposit

The tenants are seeking return of double the security deposit.

In the tenants’ written submissions they state the security deposit refund was received in the mail March 16, 2012; however, during the hearing the tenants acknowledged that the landlord repaid the security deposit within 15 days of receiving the tenant’s forwarding address or the end of tenancy.

The tenants were of the position they are entitled to double the security deposit because the landlord failed to complete condition inspection reports.

The landlord acknowledged condition inspection reports were not prepared and pointed out that no claim was made against the security deposit. Rather, the security deposit was refunded in full within the time limit required under the Act.

Damage or loss related to mould in the rental unit

The majority of the testimony and the written submissions involved the allegation that the rental unit was contaminated with mould. I have summarized the testimony and written submissions of both parties below.

Tenants’ submissions –

The landlord and her agent attended the property on July 9, 2012 to compare the move-in checklist to the condition of the property and assess the repairs needed. During the inspection on July 9, 2011 the tenants made the landlord and her agent aware of standing water and mould in the crawl space. The landlord’s response was that she would need to employ a carpenter to resolve the issue. A carpenter never attended the property.

In the tenant’s written submission the tenants pointed to the checklist they submitted as evidence to support of their position the landlord was aware of mould in the crawl

space. During the hearing, the tenant acknowledged that he had altered their copy of the checklist in February 2012 to indicate there was mould in the attic and crawl space.

The tenants also provided photographs of the crawl space as evidence. The tenant stated that he took the photographs of the crawlspace on July 10 or 12, 2011.

In August 2011 the tenants noticed mould in two of the three bedrooms. The tenants stopped using the two bedrooms except for storage purposes.

On or about September 20, 2011 the tenant complained again to the landlord that there was mould in the crawl space and at that time they informed the landlord there was mould in the house as well. The landlord's response was the same as before: that she needed to have a carpenter resolve the issue.

In October 2011 the landlord had a commercial air blower placed in the crawl space; however, the noise was disruptive and the landlord took it away shortly thereafter.

Between October 2011 and January 2012 the tenants suffered extreme health conditions that the tenants attributed to mould exposure. However, they made no further requests to the landlord to address the mould. The tenants explained that they believed the landlord would give them the same excuse as on previous occasions.

On February 12, 2012 the tenant looked in the attic and discovered mould in the attic. The tenant notified the landlord's agents the following day. On February 14, 2012 the tenants gave their written notice to end tenancy.

On February 15, 2012 the landlord's agents attended the property and observed the mould and issues with the roof. The tenant had prepared a document entitled "Condition Report of Mold" for the landlord's agent to sign, acknowledging the presence of mould. The agent signed the document after making notations that the heat was off and that an odour could not be detected because the agent had a head cold.

I noted that the Condition Report of Mold document indicated that the windows in the bedrooms were shut "to prevent moisture from the outside form entering into the bedroom". However, during the hearing the tenant testified that the windows were normally left open but that on rainy days, such as February 15, 2012, they were shut.

The landlord's agents had a roofer attend the property on February 15, 2012. The roofer determined that supporting trusses were needed and the roof required significant

repairs to stop the ingress of water. The tenants prepared a document “Condition Report of Roof” and requested the roofer sign it.

Also on February 15, 2012 the tenants visited their doctor and confirmed that their health had deteriorated due to mould exposure. The doctor wrote a note to this affect. Upon enquiry during the hearing, the tenant stated he had visited the doctor and learned that his health was suffering due to mould exposure before he gave the notice to end tenancy. The tenant acknowledged that the doctor had not attended the rental unit.

As a result of the mould in the rental unit, the tenants are seeking compensation for loss of use and enjoyment of two bedrooms in the rental unit ($1,350.00); moving and mail forwarding costs ($660.00 + $50.40); and, putting the tenant’s health in jeopardy ($5,000.00).

Landlord’s submissions –
The landlord submitted that there was no discussion or observation of mould on July 9, 2011 or September 20, 2011 or at any other time prior to February 2012.

The landlord’s agent submitted that when the parties met at the property in July 2011 there was a discussion about a smell of sewer, among other things. The agent investigated and attributed the smell to a dirty bathroom since the smell improved after the bathroom was cleaned. The landlord’s agent looked in the crawl space that day and did not observe any standing water; however, the former tenant’s abandoned possessions were in there and the area looked dirty and stained.

The agent stated that he does not recall the crawl space looking like that depicted in the photographs submitted into evidence by the tenant. Nor did the tenant mention mould to the agent in July or at any time prior to February 2012.

The agent and the landlord acknowledged that the discussion in July 2011 also pertained to known drainage issues in the general area and that ideally the crawl space would have poured concrete floor as opposed to a layer of poly on gravel.

The landlord acknowledged that there was moisture in the crawl space in October 2011. In response the landlord had the perimeter drains unplugged by a professional and placed a commercial air blower in the crawl space. When the tenant complained that the air blower was too noisy the landlord had it removed. The landlord submitted she also spoke to her carpenter and he suggested vents be installed in the spring.

When the landlord's agent went to the rental unit February 15, 2012 the agent observed towels at the bottom of the bedroom doors, the heat off in the bedrooms, the windows shut and moist with condensation.

The landlord's agent submitted that the landlord has responded to repair issues raised by the tenants and pointed to examples such as: replacing the dishwasher immediately after the old one failed; paying for a new light fixture, toilet seat, and door seals at the request of the tenants; having the perimeter drains unplugged and providing a fan when the crawl space became moist in October 2011; and, calling a roofer immediately after learning of issues with the roof.

The landlord provided evidence that the roof had previously been replaced, including the plywood sheeting, in 2001 at a cost of approximately $4,000. The landlord acknowledged that the roofer hired in February 2012 pointed out that two trusses were apparently broken by the previous roofer; however, the trusses were over the carport and not the house. Temporary supports were installed when the roofer attended the property in February 2012.

The landlord's agent pointed to inconsistencies in the tenants' submissions, such as: the doctor's note is dated after the tenants gave notice to end the tenancy; the tenant acknowledged altering the move-in checklist during the hearing since the landlord had provided the original document as evidence; the tenant's submissions with respect to when the security deposit was repaid changed; the tenant had submitted the landlord's agent had cleaned the perimeter drains once but that is untrue since the agent does not possess such tools to do so; and, there are photographs of mould in only one bedroom submitted into evidence despite allegations two bedrooms were unusable.

The landlord's agents submitted that the tenants had indicated to them that they wanted to move to be closer to family and that they knew they were going to move when they paid their last hydro bill. With respect to hydro, the agent claimed that the tenant had stated that hydro was expensive and they had to chose between hydro and groceries.

In summary, there was no complaint of mould in the rental unit until February 2012, a small amount of mould was observed in the corner of one bedroom, the landlord permitted the tenancy to end without a month's notice without consequence to the tenants and refunded the security deposit in full.

Filing fee and other dispute costs

In addition to the filing fee, the tenants are seeking recovery of registered mail costs and printing costs they incurred to prepare for this dispute.

The Act provides that an applicant may be awarded recovery of the filing fee only. Other costs associated to filing an application or preparing for the dispute proceeding are not recoverable under the Act. Accordingly, I have not considered these other costs further and that portion of the tenants' claim is dismissed summarily.

Analysis

Upon consideration of all of the evidence before me, I provide the following findings and reasons with respect to the tenants' claims against the landlord.

Double security deposit

Section 38 of the Act provides that the landlord must pay a tenant double the security deposit where the landlord fails to repay the security deposit or file an Application for Dispute Resolution claiming against the security deposit within 15 days of the later of: the date the tenancy ended or the date the landlord received the forwarding address.

Given the tenant's testimony that the security deposit was repaid within 15 days I find the provision for double the security deposit does not apply in this case.

I find the tenants' position that they are entitled to double the security deposit because the landlord failed to participate or prepare condition inspection reports to be incorrect and not supported by the Act. The consequences for not participating or preparing condition inspection reports are specifically provided for in sections 24 and 36 of the Act. Essentially, those sections provide that a landlord cannot seek the tenant's consent to deduct amounts for damage from the security deposit or make a claim against the security deposit for damage where inspection requirements are not met. In this case, the landlord did not make any deductions form the security deposit and the full amount was returned to the tenants within the time limit provided by the Act.

In light of the above, the tenants' request for double the security deposit is dismissed.

Damage or loss related to mould in the rental unit

Section 32 of the Act provides that a landlord has a statutory duty to provide and maintain a residential property so that it complies with health, safety and housing standards required by law.

Upon review of the photographs submitted by the parties, I find the photographs depict what appears to be mould in the crawlspace, attic, and one bedroom.

Residential Tenancy Policy Guideline 16 provides for claims in damages. The guideline provides, in part,

> **Claims in Tort**
> A tort is a personal wrong caused either intentionally or unintentionally. An arbitrator may hear a claim in tort as long as it arises from a failure or obligation under the Legislation or the tenancy agreement. Failure to comply with the Legislation does not automatically give rise to a claim in tort. The Supreme Court of Canada decided that where there is a breach of a statutory duty, claims must be made under the law of **negligence.** In all cases the applicant must show that the respondent breached the care owed to him or her and that **the loss claimed was a foreseeable result** of the wrong.
>
> [my emphasis added]

Considering the above, in order to succeed in a monetary claim the tenants must first show that the presence of mould was the result of the landlord's negligence. It is not enough to prove the mere presence of mould.

Negligence is the failure to exercise the degree of care considered reasonable under the circumstances, resulting in an unintended injury to another party.

Should negligence on part of the landlord be established, the tenants also have the burden to prove they suffered a foreseeable loss as a result of the negligence and that they took reasonable steps to minimize their loss.

The tenants assert that the landlord knew of mould in the crawlspace since July 2011 and in two of the bedrooms since September 2011 and the landlord not take reasonable action to remedy the problem. The landlord denied such knowledge. I have considered all of the evidence before me to determine whether the tenants have proven, on the balance of probabilities, that the landlord knew of mould in the crawl space and in the bedrooms and the landlord failed to act reasonably in the circumstances.

I find the disputed verbal testimony does not satisfy me that the parties discussed mould on July 9, 2011 or September 20, 2011 as alleged by the tenant. Further, the move-in "checklist" prepared by the tenant in July 2011 did not contain any notation about mould anywhere on the property. Rather, such notations were added in February 2012.

I am satisfied the landlord knew of water infiltration in the crawlspace in October 2011. However, I was provided evidence the landlord attempted to address the issue by having the perimeter drains unplugged and an air blower placed in the crawl space until the tenant complained of the noise. Given the area is known for drainage issues and

the landlord has had to regularly clear the perimeter drain I find the landlord's actions in October 2011 to be reasonable. However, I find insufficient evidence the landlord knew of or saw mould in the crawl space in October 2011.

I have given little evidentiary weight to the doctor's note as evidence the tenants' health suffered from mould exposure from October 2011 through February 2012 as the doctor's note is dated February 15, 2012 and the note does not indicate the tenants presented with symptoms associated to mould prior to February 15, 2012. Further, I find the doctor has formed an opinion based solely upon the tenant's statements. The note states: "The [tenants] have been exposed to mould in their rental house." Yet, the doctor has not been to the rental house.

I have given little evidentiary weight to the "Condition Report of Roof" as it was a self-serving document prepared by the tenants and the roofer was not present at the hearing to provide testimony. It appears the only statement written by the roofer was that there were broken trusses which caused a sag in the roof and allowed water ingress. This statement does not indicate whether those trusses were over the carport or the house. Therefore, I accept the undisputed verbal testimony of the landlord that the trusses were over the carport.

I find I am not satisfied that the photograph taken of the crawl space by the tenant was actually taken in July 2011 as he testified. I find that I have considerable doubts about the tenant's credibility given the tenant's changing submissions, inconsistencies, and failure to disclose full particulars, as illustrated by the following examples:

- In the tenants' written submission they pointed to the move-in checklist as evidence the landlord knew of mould in the crawlspace in July 2011; however, the tenants had altered the checklist without acknowledging such alteration in their written submission.
- The tenant acknowledged altering the move-in checklist after the landlord produced the original unaltered version of the move-in checklist as evidence for this proceeding.
- The tenant stated he learned from the doctor of the affects of mould on the tenants' health before giving notice to end the tenancy; yet, the doctor's note is dated after the tenant's notice was given.
- In the "Condition Report of Mold" prepared by the tenant on February 15, 2012 the tenant indicated the windows in the bedrooms were shut and latched to prevent moisture from entering from the outside. During the hearing he submitted the windows were ordinarily open.

- The tenant prepared a significant number of documents during this tenancy yet the tenant did not prepare one written request or complaint about mould until they decided to give notice to end the tenancy in February 2012.
- In the tenants' written submission they indicate the landlord's agent told them the landlord would not be giving the tenants any money. The tenants indicated this involved the security deposit. However, the tenants failed to mention that they had sent a letter to the landlord in the preceding days demanding the landlord pay them compensation of $7,600.00 plus their moving costs.

Given the lack of written requests for repairs or mould issues to the landlord, the tenant's failure to file an Application for Dispute Resolution to seek repair orders, and the tenant's diminished credibility, I find insufficient evidence that the landlord knew of mould until the tenants complained of such in February 2012.

In contrast, I found the position of the landlord and her agents to be consistent and supported by evidence. I find, on the balance of probabilities, the landlord adequately responded to repair issues brought to her attention. Therefore, I find the tenants have failed to prove that the landlord knew of mould in the rental unit and was negligent in rectifying the issue.

Finally, policy guideline 16 provides for awards for Breach of Contract where: "the tenant is deprived of use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on part of the landlord." Compensation would be for the portion of the premises affected.

I find sufficient evidence there was some mould in one of the three bedrooms, but not two bedrooms as asserted by the tenants. Nevertheless, the tenants acknowledged using the room for storage. Although the tenants asserted in their written submission that guests could not use the other spare bedroom and had to stay in a hotel, I find insufficient evidence to show the second bedroom was unusable or that the tenant's guests stayed in a hotel. Therefore, I am not satisfied from the evidence before me that the tenants suffered a loss of use of the two bedrooms or that the tenants took reasonable action to minimize their loss of use by requesting necessary repairs of the landlord.

In light of the above, I find the tenants have not established an entitlement to compensation from the landlord. Rather, I find that upon the issue of mould being brought to the landlord's attention the landlord acted reasonably in allowing the tenants to end their tenancy without a full month's notice and without consequence. Therefore, I dismiss the tenant's claims for compensation entirely.

Given the tenants' lack of success in this application I make no award for the filing fee.

Conclusion

The tenants' application has been dismissed in its entirety.

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: October 3, 2012.

Residential Tenancy Branch