Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRT, LRE, RP, MNDCT, MNSD, FFT (TENANTS);
MNDCL-S, OPR, FFL (LANDLORD)

Introduction

This hearing dealt with cross-applications by a landlord and tenants under the *Residential Tenancy Act* (the *Act*). The tenants applied for the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Ten-Day Notice) under section 46;
- An order suspending or setting conditions on the landlord's right to enter the rental unit or site under section 70;
- An order requiring the landlord to conduct repairs under section 32;
- An order for monetary loss under section 67;
- An order for the return of the security deposit under section 38;
- An order for reimbursement of the filing fee under section 72.

The landlord submitted two Amendments to increase his monetary claim, first to $5,000 on July 26, 2018 and then to $9,000 on August 8, 2018.

The landlord applied for the following:

- An order for monetary loss under section 67;
- An order to apply the security deposit to the monetary loss under section 72;
- An order for reimbursement of the filing fee under section 72.

Both parties attended the hearing and were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party, call witnesses and make submissions.

Each party acknowledged receipt of the other party's materials. No issues of service were raised.

At the outset of the hearing, the tenants explained they had vacated the premises and withdrew their claims for the following:

- An order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Ten-Day Notice) under section 46;
- An order suspending or setting conditions on the landlord's right to enter the rental unit or site under section 70;
- An order requiring the landlord to conduct repairs under section 32.

The tenants' claims as described above are therefore dismissed without leave to reapply.

Issue(s) to be Decided

Are the tenants entitled to the following:

- An order for monetary loss under section 67;
- An order for the return of the security deposit under section 38;
- An order for reimbursement of the filing fee under section 72.

Is the landlord entitled to the following:

- An order for monetary loss under section 67;
- An order to apply the security deposit to the monetary loss under section 72;
- An order for reimbursement of the filing fee under section 72

Background and Evidence

The parties agreed they entered into a residential tenancy agreement for a house which started on February 12, 2016 and ended when the tenants vacated on July 31, 2018.

The tenants paid monthly rent of $1,400.00 payable on the first of the month. A copy of the agreement dated January 16, 2016 was submitted as evidence. The agreement stated the tenants were responsible for utilities. It also stated, “the tenant is responsible for maintaining both the front and back lawn by cutting it with their own lawnmower when deemed necessary.”

At the start of the tenancy, the tenants provided a security deposit in the amount of $700.00 which is held by the landlord. The tenants requested in writing on August 9, 2018 that the landlord return the deposit and provided their forwarding address. The landlord acknowledged receipt of the tenants’ instructions and claimed the right to keep the security deposit as partial compensation for damage caused by the tenants to the unit.

No condition inspection was conducted on moving in or moving out.

At the outset, the tenants acknowledged owing $1,400.00 to the landlord for outstanding rent for the last month of the tenancy, July 2018.

The tenant applied for dispute resolution on July 5, 2018. The landlord applied for dispute resolution on July 31, 2018.

Considerable time during the hearing was spent clarifying the landlord’s claim for damages and referring to the landlord’s documentary evidence. The landlord’s final claim at the hearing was for $5,840.00 including the outstanding rent of $1,400.00.

A summary of the landlord’s claims is contained in the following table which includes a column to reflect the final claim made at the hearing:

ITEM	**DESCRIPTION**	**AMOUNT**	**HEARING** **“w/d” indicates withdrawn**
Hot water tank	replacement	$335.00	**w/d**
	labour	$500.00	**w/d**
Replacement of three exterior walls		0	0
	Drywall removal	$180.00	**w/d**
	Construction and Painting	$2,500.00	$2,500.00
	Baseboard	$650.00	**w/d**

Flooring		$3,200.00	$1,000.00
Mold		0	0
	Removal material	$295.00	**w/d**
	Removal material	$50.00	**w/d**
	Blinds damaged by mold	$440.00	$440.00
	Labour to remove mold	$1,600.00	**w/d**
Lawn		$550.00	$500.00
Garbage removal		$500.00	0
rent		$1400.00	1400.00
	TOTAL	**$9,000.00**	**$5,840.00**

The tenants claimed the following:

ITEM	**DESCRIPTION**	**AMOUNT**
Mold	Bleaching supplies	$400.00
	Labour (40 hours x $20.00 an hour)	$800.00
Hot water tank	Repairs - Invoice May 12, 2017	$199.50
	Repairs – Invoice May 17, 2017	$199.50
Loss of Quiet Enjoyment		$900.00
	TOTAL	**$2499.00**

The tenants testified the reason for vacating the unit was that the landlord refused to effectively deal with the issue of mold or any other issue they raised to make the unit liveable and comfortable for their family which included children.

The conflicting claims concern the hot water tank, mold and the need for repairs as a result of mold, kitchen flooring, and loss of quiet enjoyment.

With respect to the hot water tank, the tenants submitted two invoices dated May 12 and May 17, 2017, each for $199.50. The tenants claim reimbursement from the landlord. The landlord acknowledged receiving copies of the receipts and refusing to reimburse the tenant when they were submitted.

The tenants stated they informed the landlord on May 12, 2017 that the hot water tank was not working and was leaking. They testified the landlord told them, “If you know someone you can call, call them.” Accordingly, the tenants phoned a plumber who came

to the unit and inspected the hot water tank. The plumber stated the hot water tank needed to be replaced. The plumber submitted an invoice for $199.50 which the tenants paid. The tenants sought reimbursement from the landlord and upon his refusal, testified they were not aware they had any options but to bear the cost.

The landlord then replaced the hot water tank. Subsequently, the tank still did not work. The tenants reported this to the landlord who stated he was not prepared to do any more. The tenants stated they could not live there with their children without hot water. Again, they were not aware they had any viable options except to pay for the repair.

Accordingly, the tenants called a plumber on August 17, 2018; the plumber attended and corrected the problem, which related to an error in installation of the hot water tank. The tenants then incurred the second expense of $199.50. Again, the landlord refused to reimburse the tenants.

The landlord denies he agreed to pay any expense relating to the hot water tank, particularly the first invoice. He testified the hot water tank worked after it was replaced and there was no reason for the tenants to request service on the second occasion. He refused to reimburse the tenants for either of these expenses as he testified to his belief they were not his responsibility.

The tenants testified a major concern throughout most of the tenancy related to the presence of mold. The tenants stated the mold reappeared in disturbing and increasing amounts despite their best efforts to eliminate it. The tenants submitted photographs of the mold on walls and on the edges of the flooring.

The tenants stated the unit had been recently painted before they moved in. However, after several months, mold started appearing throughout the unit. It was especially obvious in the edges of the walls, the intersection of the floors with the walls, and on window coverings, such as blinds.

No expert reports were submitted by either party to identify the type of mold, determine toxicity or danger, or recommend means of removal.

The tenants testified they repeatedly asked the landlord to deal with the mold and he refused to do anything. The tenants testified they purchased bleach and other products to apply to the mold. Their efforts would either not work or were only effective temporarily. They expressed their opinion that the mold was in the unit when they moved in, albeit concealed under a fresh coat of paint. They claimed that the low

temperature and moisture in the unit contributed to the growth and prevalence of the mold.

The tenants testified they complained to the landlord many times during the tenancy about how cold the unit was. They testified that the unit was essentially not heated during the winters as the furnace did not work. The parties agree the landlord supplied them with one electric heater which the tenants stated was inadequate to comfortably heat the unit.

The tenants claim the mold was harmful to their health, particularly to their children. The tenants testified one of their children was treated for cancer during the tenancy and they believed the unhealthful conditions in the unit contributed to the family's general poor health.

The tenants did not provide any evidence linking the mold with health consequences for themselves or their children nor did they submit medical reports.

The tenants claim in total the sum of $1,200.00 for their cost and time in dealing with the mold. The tenants did not provide evidence of the claimed expenditures for mold-removing products or a list of dates with corresponding times spent dealing with the mold. Instead, they estimated their out-of-pocket expenses at $400.00 and their time at 40 hours, valued at $20.00 an hour, for a total labour claim of $800.00 over the approximately 2.5 years of the tenancy.

The landlord acknowledged the presence of mold in the unit but denies any responsibility for its removal. He claims the tenants *themselves* were responsible for the mold and its prevalence.

In support of his claim, the landlord testified he purchased the unit in 2011 and had rented it twice before to other tenants. He denied the unit had any mold in it before the tenants or that previous occupants had complained about the mold.

The landlord claimed the tenants are responsible for the mold because they failed to heat the unit adequately, they were "hoarders" and they did not open the windows of the unit, all of which was denied by the tenants.

While the landlord acknowledged he brought the tenants a space heater because the furnace did not work, he put the responsibility on the tenants themselves for failing to get more heaters and to effectively heat the unit.

With respect to his claim the tenants were hoarders, the landlord testified there were many stacked boxes throughout the unit, preventing air circulation to stop mold growth. The tenants replied to these claims by saying the boxes to which the landlord referred contained their childrens' sporting goods and other family items. They denied they were hoarders but an ordinary family with a normal volume of possessions.

Finally, the landlord claims the tenants never opened the windows thereby causing moisture build-up in the unit permitting the growth of mold. The tenants state the windows were open, weather permitting, and deny that their failure to open windows had anything to do with the growth or presence of the mold.

The landlord acknowledged the house was built in the 1950's or 1960's, making the walls of the unit 60 years old or greater.

The landlord claims that because of the tenants' actions (or inaction), the mold spread to the inside of the walls and necessitated the replacement of 3 exterior walls of the unit. He claims reimbursement from the tenants for the cost of rebuilding and painting the walls. He also claims $440.00 to replace blinds damaged by mold.

The tenants deny they had anything to do with the establishment or the growth of the mold. They state they did their best to remove it and prevent it from spreading. They acknowledge the unit was inadequately heated and testified to many requests to the landlord to fix the heating system. They acknowledge the blinds were covered with mold. However, they testified it was impossible to remove the mold permanently or to adequately clean the unit including the blinds.

The landlord submitted a one-page work order dated August 1, 2018 in support of his expenses associated with the mold. He claims this document is a receipt and that he incurred the expenses as described.

The document is reproduced below:

ITEM	QUANITY	DESCIPTION	UNIT PRICE	TOTAL PRICE

1	1200	Flooring supply & installation		3200.00
2	Sqf 1200 sqf	Painting supply & painting		$2500.00
3.	340f	Baseboard supply & installation		$650.00
4		Mould clean		50
			Subtotal	$6400.00
			Shippling	
			GST 5%	320.00
			Total	
			Deposit	1920
			Balance	$4800.00

The landlord submitted no evidence in support of his claim the mold was caused by the tenants, that it penetrated the walls, or that the walls required replacing because of the presence of mold. He submitted pictures of the walls, flooring and blinds showing the presence of mold. However, he did not submit pictures of any non-surface mold, such as in the drywall, or any structural components of the walls. He submitted no tests or expert reports concerning the presence of the mold, the cause or the need for the repairs he described.

With respect to the kitchen flooring, the landlord stated the flooring in the kitchen lifted during the tenancy which he opined was because of moisture from the tenants' cooking, thereby necessitating its replacement.

The landlord relied upon the one-page work order referenced above in support of his claim for compensation which stated the cost of replacement of all the flooring in the unit was $3,200.00, $1,000.00 of which the landlord estimated related to the kitchen.

The landlord submitted no evidence of the size of the various rooms in which flooring was replaced, or the quality of the existing or replacement flooring, or the cost/description of the new flooring. He submitted no evidence or photographs of the condition of the flooring before or after the tenancy necessitating its replacement.

The landlord was unsure of the age of the flooring, and estimated its age at 10 years. The landlord acknowledged that some of the flooring in the unit may have been as old as the house, that is more than 50 years old.

The tenants deny any responsibility for the replacement of the flooring. They point to the possible age of the flooring throughout the unit as being decades old. They state the landlord was a ‘slumlord’ and the place was barely fit to live in. They claim they took reasonable care of the unit and did not do any damage whatsoever.

The landlord submitted an invoice dated August 6, 2018 from a landscaping company in support of his claim for reimbursement from the tenants of $500.00 for lawn maintenance. The invoice lists the following:

> “*lawn cut, yard clean up, trimming back bushes, weedwhacking, pruning trees (16 feet high max) and disposal of debris*”.

The total of the invoice is $630.00. The landlord reduced his claim to $500.00 to remove the portion he estimated related to pruning of trees.

The parties agree the tenants had a responsibility to cut the lawn during the tenancy. The tenants claim they did cut the lawn during the time they were in the unit.

The tenants denied any responsibility for reimbursement of this expense. They testified the yard had been neglected for a long time and bushes were encroaching on the lawn. They state the expense submitted by the landlord related to brush clearing, tree pruning, cleaning clogged gutters, and removal of associated debris, which was not their responsibility. Any debris, they claim, was either in the yard when they moved in, or was created in brush clearing and tree pruning.

The landlord submitted the only photographs of the “lawn”. The pictures show an overgrown area which appears to be at the rear of the unit. Visible are bushes, high grasses and trees. No lawn is apparent.

Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes if damage or loss results from a tenancy, an Arbitrator may determine the amount and order a party to pay compensation to the other. To claim for damage or loss under the *Act*, the party claiming the damage or loss bears the

burden of proof. The claimant must prove the existence of the damage/loss, and that it resulted directly from a violation of the agreement or a contravention of the *Act* on the part of the other party.

Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to prove entitlement to a monetary award.

Rule 6.6 of the *Rules of Procedure* states in part as follows:

> ***6.6 The standard of proof and onus of proof***
> *The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim*.

I will first consider the tenants' claims.

The tenants claimed reimbursement for the two invoices of $199.50 each dated May 12 and May 17, 2018 for service repairs to the hot water tank.

The obligations of a landlord are described in *Residential Tenancy Policy Guideline # 1 – Landlord & Tenant – Responsibility for Residential Premises* which states in part as follows:

> *The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property.*

Landlords are generally responsible for making repairs to the rental unit. While the agreement does not specifically state the landlord is responsible for providing and maintaining the hot water tank, this is an obligation accepted by the landlord in this tenancy as evidenced by his replacement of the malfunctioning tank.

I therefore find it plausible that the landlord would agree, upon notification by the tenants that the hot water tank was leaking and not working, that the tenants could call in a repairperson. I also accept as plausible the tenants' evidence that, when the hot water tank did not function after it was replaced and the landlord denied further repairs, the tenants sought a solution to the problem after not having hot water for five days.

I have reviewed all the evidence and I find on a balance of probabilities that the tenants have established a claim for compensation for the repair expenses for hot water tank repairs. I accept the tenants' evidence they have incurred the expenses claimed of $199.50 each on two occasions, that they requested reimbursement from the landlord, and that the landlord improperly denied reimbursement.

I therefore award the tenants $199.50 and $199.50 for reimbursement of the two repair invoices for the hot water tank.

I will now consider the issue of the competing claims regarding mold. The landlord, as stated, has an obligation to provide a rental unit that is suitable for occupation and meets health, safety and housing standards. Both parties submitted photographs illustrating a rental unit with considerable mold.

On a balance of probabilities and considering all the evidence, I accept the tenants' testimony they spent money and time in attempting, ultimately ineffectively, to deal with the mold during the tenancy. As the tenants have not submitted any invoices or supporting details, I award a nominal amount of $400.00 as compensation for time and expenses in this regard.

Regarding the tenants' claim for loss of quiet enjoyment in the amount of $900.00, I refer to Section 28 of the *Act* as follows:

> ***28*** *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: […]*
>
> *(b) freedom from unreasonable disturbance; […]*

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

> *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.*
>
> *In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*

Considering all the evidence and the considerable testimony of the parties, I find, on a balance of probabilities, that there has been substantial interference by the landlord with the ordinary and lawful enjoyment of the unit and the tenants' right to quiet enjoyment. I find the mold in the unit was a problem of increasing concern to the tenants who communicated their concern to the landlord. I accept the tenants' evidence they experienced considerable alarm and concern for the health of their children because of the prevalence of the mold. I find the landlord did not respond adequately or at all to the tenants' reasonable concerns. I find the landlord had a responsibility to assure the unit was safe for occupancy and he failed to do so.

I therefore find the tenants are entitled to compensation in the amount of $700.00 for loss of quiet enjoyment.

I will now turn to the landlord's claims for compensation.

I have considered all the landlord's evidence in support of his claim for compensation. I note the claims are substantiated by only one document which appears to be more in the nature of a work order than in a receipt. I am not satisfied the landlord has incurred the expenses claimed.

I find, on a balance of probabilities, that the tenants are not responsible for the mold in the unit. I therefore find that the landlord's claims for compensation for repairs and replacement of the blinds allegedly necessitated by mold are not established. I dismiss the landlord's claims for compensation for all claims related to mold purportedly caused by the tenants including repairs, painting, baseboard, blinds, and cleaning, without leave to reapply.

In considering the landlord's claim for compensation with respect to the kitchen flooring, I find the landlord has not established on a balance of probabilities that the tenants have caused any damage. I find the condition of the flooring at the start of the tenancy and at

the end was not established. The landlord did not submit details of the cost or type of flooring purchased as a replacement nor did he submit proper receipts for purchase or installation.

I therefore dismiss the landlord's claim for compensation for the kitchen flooring without leave to reapply.

The landlord's final claim relates to $500.00 for lawn mowing. I find the landlord's photographs do not depict "lawn", but an area of overgrowth, brush and trees, which is outside the obligation of the tenants to maintain. I find the landlord has not established on a balance of probabilities that the tenants failed to mow the lawn or that he incurred any expenses which were the responsibility of the tenants.

As the tenants have been substantially successful in their claim, I award the tenants reimbursement of the filing fee.

The tenants are entitled to a monetary order in the amount of **$2,599.00** calculated as follows:

ITEM	AMOUNT
Tenants: reimbursement of repair costs	$199.50
Tenants: reimbursement of repair costs	$199.50
Tenants: reimbursement of costs associated with mold	$700.00
Tenants: award for loss of quiet enjoyment	$700.00
Tenants: filing fee	$100.00
Tenants: reimbursement of security deposit	$700.00
AWARD TO TENANTS	**$2,599.00**

The landlord is awarded $1,400.00 for outstanding rent as agreed between the parties. The remainder of the landlord's claims are dismissed without leave to reapply.

I award the tenant a monetary order in the amount of **$1,199.00** calculated as follows.

Award to tenants	$2,599.00
Award to landlord	($1,400.00)
MONETARY ORDER TENANTS	**$1,199.00**

Conclusion

The tenants are provided with a monetary order in the amount of **$1,199.00.** The landlord must be served with this order as soon as possible. Should the landlord 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.

The landlord's claims are dismissed 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: September 18, 2018

Residential Tenancy Branch