



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNSD

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67; and
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;

The tenant's power of attorney (the "tenant") attended the hearing and spoke on behalf of tenant RD, who was not present. The landlord and his legal counsel (collectively the "landlord") attended the hearing. Each party was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Jurisdiction

The landlord contends that the tenant's application pertains to damages for negligence and because the Residential Tenancy Branch ("RTB") does not have authority to award damages for negligence, the landlord seeks to have the application dismissed.

In the alternative, the landlord submits that the application be dismissed on the basis of jurisdiction because the claimed action relates to a breach of a settlement agreement, which he attests, falls outside the scope of the RTB. In support of his position, the landlord has submitted a letter, copy of a cheque and Canada Post tracking receipts.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, specifically due to the actions or neglect of one party, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Pursuant to Residential Tenancy Policy Guideline #16, an Arbitrator may award nominal damages and aggravated damages. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Based on the above, I am satisfied that I have authority to award damages for negligence and therefore decline the landlord's request to dismiss the application on this basis.

In regards to the settlement agreement, the landlord must first prove a valid settlement agreement exists. For there to be an enforceable settlement agreement, there must be an agreement between the parties, a meeting of the minds. The landlord has provided a letter dated February 20, 2018 to which he refers to as the "settlement agreement." It reads;

"Please find enclosed a cheque for \$400.00. The cheque constitutes full and final settlement of the Tenancing of the Property by yourself. By cashing the cheque you specifically acknowledge that you will not commence any further action with respect to the Tenancing of the Property. If you are not agreeable to the basis of the settlement, please immediately return the cheque to our office."

[Reproduced as written]

It should be noted that during the hearing, both parties agreed that the tenant had not cashed nor returned the cheque. In fact, the tenant testified that he filed this application in part to obtain authorization to cash the cheque, which he believed to be his security deposit.

Upon review of this letter I find the landlord has failed to establish an agreement was reached and that a valid settlement agreement exists. The letter does not demonstrate terms and conditions mutually agreed upon by both parties; instead it demonstrates that the landlord has presented an offer of settlement to the tenant. This is made clear, with the landlord's statement, "if you are not agreeable..." In the absence of a valid settlement agreement, I find the matter falls within the scope of the *Act* and therefore decline the landlord's request to dismiss it.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant authorized to obtain a return of all or a portion of the security deposit?

Background and Evidence

As per the testimony of the parties, this tenancy, based on an oral agreement began in January of 2016. Rent in the amount of \$800.00 was payable on the first of each month. The tenant vacated the rental unit on January 31, 2018 and on this same date the tenant provided his forwarding address.

The tenant seeks the following monetary compensation;

Item	Amount
Mold Assessment	\$420.00
Removal of Damaged Items	\$496.65
Non-Pecuniary Damages	\$2,000.00
Security Deposit	\$400.00
Total Claim	\$3,316.65

The tenant contends that a hot water tank leak contributed to the accumulation of mold in the unit which subsequently led to the hospitalization of the tenant on December 20, 2017. It is the tenant's position that the landlord became aware of the leaking hot water tank in October of 2017 because that is when a tradesperson attended to it. The tenant testified that on this basis the landlord knew or ought to have known there was mold in the unit.

The tenant seeks to recover the cost of the mold assessment conducted on December 22, 2018, the removal of items damaged by mold and non-pecuniary damages for the mental distress endured by the tenant. The tenant remitted a security deposit in the amount of \$400.00 at the start of the tenancy, which the landlord returned to the tenant on February 20, 2018 by way of registered mail. The tenant seeks authorization to cash the security deposit cheque. In support of his position the tenant has submitted an invoice for the mold assessment, email correspondence and a medical note.

In reply, the landlord testified that the tradesperson that attended the unit in October of 2017, performed work on the heating and ventilation system; not the hot water tank.

The landlord testified that he first became aware of a potential mold issue in December of 2017, when a city official contacted him. He testified that prior to this; he had no knowledge of a mold issue. The landlord testified that following notification by the city, he inspected the unit and did find moisture and an issue with the hot water tank.

Analysis

Under section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim.

To prove a loss, the applicant must satisfy the following test prescribed by Section 7 of the *Act*,

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*, *Regulation* or tenancy agreement;
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.

The tenant argues that the mold was caused through the negligence of the landlord, whereas the landlord disputes this. In the absence of corroborating evidence that establishes the hot water tank was leaking in October 2017 and that the landlord knew of this leak and failed to rectify it, I find the tenant has failed to establish his claim that the source of mold was the hot water tank or that the mold was due to the landlord's negligence.

When a tenant discovers mold in a rental unit, the tenant should notify the landlord in writing and request remediation with a deadline. If the landlord fails to take steps to correct the situation, the tenant may file an application for a repair order, compensation for their loss and a rent reduction until repairs have been completed. Although the tenant had a mold assessment completed, he has provided insufficient evidence to establish he took the necessary steps to mitigate any loss related to mold. For the reasons stated above, I dismiss the tenant's monetary claim in relation to mold.

In regards to the security deposit, I have already established a valid settlement agreement did not exist, which means the landlord was obligated to return the security deposit within the provisions of the *Act*.

Under section 38 of the *Act*, the landlord was therefore required to return the security deposit to the tenant within 15 days of the later of the two of the tenancy ending and having received the tenant's forwarding address in writing. The landlord received the tenant's forwarding address on January 31, 2018 but did not return the security deposit within 15 days of that date.

Because the landlord failed to return the tenant's security deposit within 15 days of having received his forwarding address, section 38 of the *Act* requires that the landlord pay the tenant double the amount of the deposit. Accordingly, I find the tenant is entitled to compensation in the amount of \$800.00, less the \$400.00 cheque in his possession for a total monetary award of \$400.00.

Conclusion

I issue a monetary order in the tenant's favour in the amount of \$400.00 for the following items:

Item	Amount
Security Deposit	\$800.00
Less Cheque	(\$400.00)
Total Claim	\$400.00

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: November 8, 2018

Residential Tenancy Branch