

Residential Tenancies Tribunal

Application [REDACTED]

Decision 22-0591-05

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 11:15 a.m. on 15-June-2022.
2. The applicants, [REDACTED], represented by [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” attended by teleconference

Preliminary Matters

4. The tenants provided an affidavit (TT#01) stating that they had served the landlord with notification of an earlier hearing date. The date was postponed to today’s date and notification was sent electronically from this division on 18-March-2021. Both parties confirm they received notification.

Issues before the Tribunal

5. The tenants are seeking:
 - Compensation for damages \$2,950.00
 - Hearing expenses reimbursed \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, as well as, Residential Tenancies Policy 9: Claims for damages.

Issue 1: Compensation for damages \$2,950.00

Tenant's Position

8. The tenants submitted the rental agreement signed with the landlord. The tenant signed a year lease from 01-June-2020 until 01-June-2021 they renewed this lease until 01-June-2022. The tenant said that they paid \$1,000.00 a month rent, utilities are not included. He said that the rental period is from the first day of the month until the last and that rent is due in full on the first day of the month. He said that they paid a security deposit of \$500.00 on 23-May-2020.
9. The tenant said that there were issues with the apartment and they provided the landlord with notice for 01-December-2021. The landlord accepted the notice and they moved out. The landlord returned the full security deposit to the tenants after they vacated the apartment.
10. The tenant said that they felt the landlord was not attending to the issues they had with the apartment in a timely manner. He said that the compensation for damages, is in relation to an issue with humidity and mold in the apartment that has damaged some of their belongings.
11. The tenant said that they had concerns with mold in the apartment. He said that the humidity was quite high despite efforts to keep it down. He said that the first summer they noticed mold under the kitchen sink. They noticed that there was a thin green mold on the cupboard and the dog's food went moldy. They were also having issues with condensation build up around the windows; they provided pictures (TT#03 & TT#04). He said that they wiped down the window sills weekly with Clorox wipes to deal with the mold, however, it continued to come back.
12. The tenant said that when they initially had issues with the humidity they contacted the landlord. The tenant said he is an architectural engineer and he inspects buildings for the provincial government. It is his opinion that the seal is broken on the window. He had a person come in for the HVAC system and he said that they told him the humidity is coming from the walls or windows. The landlord told the tenants to buy a dehumidifier and reimbursed this cost from their rent payment.
13. The tenant said that the dehumidifier would run all day and would still be showing 80% humidity. (Picture of dehumidifier (TT#05)). He said that they would have to empty 3-5 liters of water every couple of hours.
14. The tenant said that they discussed this with the landlord and he said that there was nothing he could do, he offered to have someone look at the issue. The landlord also made a suggestion for them to keep the heat on as well as run the dehumidifier. The tenant said that turning up the heat will not take away the humidity.
15. During the colder months there was some reprieve from the humidity. The next summer they had issues again. In the fall the tenant said he and his partner were missing work due to illness that they link back to the issues with the mold. They decided to move.

16. The tenant said that some of their personal possessions were destroyed by black mold. He provided a list of damages (TT#03) as follows:

Description of damages	Claim
3 seat couch	750.00
Queen size foam mattress	600.00
Queen size box spring	120.00
Two end tables	120.00
Three shelf bookcase	150.00
Two piece luggage set	150.00
9 drawer dresser with mirror	600.00
Dog bed	80.00
Three rugs	60.00
Clothing	200.00
Total	\$2,950.00

17. The tenant provided pictures of the items showing the mold that has grown on the items, the age of the items and whether or not they were replaced.

Description of damages	Picture #	Not replaced	No receipt
3 seat couch	TT#09		X
Queen size foam mattress	TT#10	X	
Queen size box spring	TT#11	X	
Two end tables	TT#13		X
Three shelf bookcase	150.00	X	
Two piece luggage set	TT#15	X	
9 drawer dresser with mirror	TT#12	X	
Dog bed	TT#16		X
Three rugs			X
Clothing			X

18. The tenant said that due to the cost, they were waiting on the outcome of the hearing to purchase new items.

19. The tenant said that the landlord's evidence of statements from previous tenants and his current tenant should not be considered proof. He said that he believes that the seal went off the window since they moved in and that the new tenant has not gone through the summer months, so she would not know if she will be affected.

Landlord's Position

20. The landlord agrees to the terms described by the tenant in paragraphs 9 & 10 in reference to the rental agreement.

21. The landlord submitted an occupancy certificate from the [REDACTED] (LL#04) he said that the apartment was up to code when given the certificate; it is dated for 2014.

22. The landlord provided emails from his tenants (not sworn) (LL#01 & LL#02) who lived in the apartment prior to the tenants moving in. The emails say that there was no issues with the apartment. He also provided an email (LL#03) from the tenant who currently lives in the apartment; she also says that she has no issues with the apartment.
23. The landlord said that after the tenant's moved he had to pay for two days cleaning. He said that the tenants should have been cleaning the mold as they were seeing it. He said, he spoke to a cleaning company and they said that if mold isn't cleaned it will grow and spread.
24. The landlord said that he has had no reports of issues with excessive moisture or mold with the apartment either before or after these tenants.

Analysis

25. Restoration master states that in order for mold to grow there would need to be excessive moisture; this appears to be the case established by the tenant in their evidence and testimony. Further to this, getting rid of mold often requires professional remediation services.

“....most DIY mold removal methods provide only a temporary solution to the problem: household cleaners are not strong enough to eliminate the fungi and paints only hide the problem. Bleach kills the spores but dead spores can be just as harmful as the living onesThe only sure way to get rid of mold for good is to use professional mold remediation services. “

(10 Facts about Mold - RestorationMaster
(restorationmasterfinder.com))

26. The above article is in opposition to the testimony of the landlord in paragraph 23. The article indicates had the tenants been cleaning the mold as they discovered it, there may have been some temporary relief, but this is not a long term solution to a mold issue. Mold often hides and is found in dark spaces not often visible and household cleaners are not powerful enough to destroy mold.
27. The tenants' belief that the issue of moisture is due to a broken seal on their window is plausible, it is also possible that this issue occurred after they took occupancy, therefore evidence prior to their occupancy is not relevant to the condition of the home after they move in. Also, as the tenant stated, the new tenant has not yet experienced the issue of mold because the summer season is just beginning and there issues were worse in the summer.
28. The tenants have clearly shown that their belongings have been destroyed by mold. They have also demonstrated that the apartment did have a buildup of condensation around the windows as well as an 80% moisture reading on the dehumidifier. These conditions are predictors of having a mold issue. It is within reason to believe that the issues with mold were caused by the high level of moisture in the apartment.

29. Section 10 of the Residential Tenancies Act, 2018, states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

1. Obligation of the Landlord -

(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

30. The landlord and tenant both acknowledge that the landlord was informed of the issue of excess moisture. The landlord attempted to mitigate this issue by having the tenants purchase a dehumidifier at the landlord's expense. However, this solution did not rectify the issue and the landlord failed to take further action.

31. When filing a claim for damages the Residential Tenancies Policy 9 states the applicant is required to show:

- That the damage exists;
- That the respondent is responsible for the damage, through a willful or negligent act;
- **The value** to repair or replace the damaged item(s)

32. I accept the testimony and evidence of the tenant that their property was damaged by mold. The tenant however, failed to prove the claim for damages, as there were no receipts or estimates provided into evidence to show the value of the damages. As stated in the policy and shown in paragraph 31, a requirement of a damage claim is proof of the value. Without this proof of value this board is unable to assess the value of the claim.

Decision

33. The tenant's claim for damages fails.

Issue 2: Hearing expenses reimbursed \$20.00

34. The tenant submitted the receipt for \$20.00 for the cost of the hearing (TT#18) and pursuant to policy 12.01, as the claim is unsuccessful, the tenant is not entitled to reimbursement of that cost.

Summary of Decision

35. The tenant's claims for damages and reimbursement of hearing expenses fail.

June 15, 2022

Date

