



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: ER, RP, PSF, MNDC, O, FF

Introduction

This matter dealt with an application by the Tenant for an order that the Landlord make emergency repairs or non-emergency repairs, for an order that the Landlord provide services or facilities required by law and for a monetary order for compensation for loss or damage under the Act or tenancy agreement as well as to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Are emergency or other repairs necessary?
2. Is the Tenant entitled to compensation for damages and if so, how much?

Background and Evidence

This tenancy started on August 1, 2003. Rent is \$1,188.00 per month. The Tenant claimed that from the beginning of the tenancy one of the bedrooms in the rental unit that was adjacent to the garage was not protected properly with a vapor barrier. Consequently, he said the walls “sweated” and the room was drafty. The Tenant said he initially had some renters occupy the room from about August to December 2003 but they complained about it and moved.

The Tenant said at some point in 2005, he noticed what appeared to be water stains on the ceiling in the room and mentioned it to the Landlord’s property manager but nothing was done. The Tenant claimed his son occupied that room off and on during the summer of 2005 and developed rashes and breathing problems which he attributed to mould. The Tenant said a mould problem was found in 10 units in the Strata property around this time and repairs were started. The Tenant wanted to be put in another rental unit until repairs were done but the Strata would not agree. In October of 2007, the Strata made repairs to the attic area above the affected bedroom, however, both Parties agree that work was deficient in a number of respects. Repairs at that time took one week to complete. The Tenant claimed the workmen did not properly clean up the debris from the repair.

The Tenant said he didn't notice anything again until November 2008 when he noticed evidence of moisture. The Strata hired someone to rip out the ceiling and insulation in January, 2009 to investigate if the cause was related to a roof leak but when they were done, left the ceiling exposed to the rafters in the attic. The Landlord claimed he did not know the Strata had left a hole in the ceiling and as soon as he discovered it made arrangements to have it repaired. The Tenant admitted that the Landlord agreed to have the ceiling repaired as of April 2, 2009, however, as he anticipated guests, the repairs were re-scheduled for April 20, 2009.

The Tenant first claimed that the bedroom in question could not be occupied for a period of 3 years. He later said that he meant it could not be occupied during the period October to March for each year of the tenancy because it had moisture issues and the mould posed a health issue and as a result, he sought compensation for a loss of that room. The Tenant claimed that when he rented the room out to others (the 2nd occasion being for a period of 3-4 months) he received \$400.00 per month. Consequently, the Tenant claimed \$300.00 for a period of 36 months or \$10,800.00.

The Tenant also argued that he incurred increased heating expenses due to the fact the room was improperly insulated and because the ceiling had been removed for 3 months. The Tenant claimed his gas bill "spiked" for the period January to March, 2009. The Tenant estimated the increased heating costs at \$1,200.00.

The Landlord agreed that the Tenant should be compensated for his loss of the room but only during periods when construction was taking place and he disputed the basis upon which the Tenant calculated the value of his loss of use of the room. In particular, the Landlord argued that it was unreasonable to base the value on the amount of rent the room could attract because the tenancy agreement prohibited the Tenant from subletting without his written consent. The Landlord said he had never been approached by the Tenant about sub-letting. The Landlord claimed that it would be more reasonable to base the value on the amount of rent amount per square footage of the bedroom compared to the whole rental unit. On this basis, the Landlord argued the value of the room was \$100.00 per month.

The Landlord argued that there was no evidence of a health issue. The Landlord claimed that an air quality test had been performed at some point when mould was first discovered in the strata property but no harmful levels were found. The Landlord did not provide a copy of that report and admitted the rental unit itself was not tested at that time. The Landlord also claimed that his property manager(s) did inspection reports from time to time and nothing was noted until 2007 that there was a problem with the room such that it could not be used.

The Tenant claimed that the property manager from 2003 to 2006 (Sally Berry) had done at least 3 inspections per year and made inspection reports that would have noted that the room was "sweating." The Landlord's current property manager, Mr. Milne,

gave evidence that there was only one report for 2003, 2 for 2006, 2 for 2007 and 2 for 2008. Mr. Milne also claimed that there was no requirement to do periodic reports until last year when the Landlord was required to do one every 3 months.

The Landlord also argued that the room could be used and was in fact used throughout the tenancy by the Tenant. The Landlord claimed that the Tenant's own evidence was that the room had been occupied by sub-tenants at least twice during the tenancy and periodically by his children. The Landlord also noted that the Tenant's son had repainted the room after the repairs were completed in the Fall of 2007 because he would be occupying it. The Landlord argued it was unreasonable for the Tenant to claim the room could not be occupied for 6 years and only complain about it now.

The Landlord also argued that the Tenant had exaggerated the increased cost of heating the rental unit due to improper insulation in the bedroom and did not provide any evidence of his actual heating expenses.

Analysis

Section 32 of the Act says that a Landlord has a responsibility to do maintenance and repairs to a rental unit unless the damage is caused by the Tenant. Section 7 of the Act says a party is entitled to compensation where they have suffered damages due to another party's failure to comply with the Act.

In this case, I find there is insufficient evidence that prior to 2007 there was a problem with the bedroom of the rental unit such that it could not be used. I further find there is insufficient evidence any problem with mould was brought to the Landlord's attention until 2007. The Tenant claimed he had at least 2 sets of subtenants reside in that room during the early part of the tenancy. The Tenant also said his son occupied the room off and on in the summer of 2005 and developed rashes and breathing problems but there is no medical or other evidence that mould was the cause of these afflictions.

I find it highly suspicious that there is an unexplained gap in the property manager's inspection reports from 2003 – 2005 during which the Tenant said he made complaints about the room. In any event, according to the inspection reports provided by the Landlord's property manager, there was no evidence of the Tenant discussing mould in the rental unit until April 27, 2007. A letter to the Landlord from the property manager dated August 10, 2007 advised him mould had been found in the rental unit. In August the Tenant was apparently informed that the Landlord could not guarantee a date to do "mould remediation." There was a delay in making repairs to the unit which were not completed until late October, or early November, 2007. The Tenant then claimed that there was nothing noticeable again until November, 2008. The Tenant claimed that his son painted the room after it was repaired but only used it for a couple of months and then did not move out until September of 2008. However, the Tenant also claimed his

daughter resided permanently with him starting in January, 2008. Consequently, I find on a balance of probabilities that the Tenant's son probably did reside in the bedroom until September, 2008.

The ceiling was removed from the bedroom in January, 2009 and has not yet been repaired. Given that the Tenant claimed the room could be used for the period April to September, I find that the bedroom was not fit for occupation for the months of October, 2007 and ½ of November, 2007 or for 1 ½ months. I also find that the bedroom was probably not fit for occupation from November 2008 to date or for 5 months (ending March 31, 2009). As a result, I find the Tenant is entitled to be compensated for a loss of the bedroom for 6 ½ months.

I prefer the Landlord's method of valuing the Tenant's loss of use of the bedroom. In particular, I find that there is no evidence the Tenant has relied on the room as a source of income over the term of the tenancy. This is likely because a term of the Parties' tenancy agreement is that "only the persons occupying the residence are those on the rental agreement (and that) the Tenant may not sub-let without the written consent of the Landlord." Consequently, I find that the Tenant is entitled to recover \$100.00 for each full month (and pro rated for each part month) that he lost use of the bedroom or \$650.00.

While I accept that the Tenant's heating costs may have been somewhat higher especially for the period January to March, 2009 when the ceiling was removed, I find there is no evidence to support his claim for \$1,200.00. The Landlord suggested that \$50.00 would be a reasonable amount of compensation. In the absence of any other evidence, I award the Tenant \$50.00 for his increased heating costs. As the Tenant has been partially successful in this matter, I find he is also entitled to recover one-half of his filing fee for this proceeding, or \$50.00.

As repairs to the rental unit are scheduled to begin on April 20, 2009, the Tenant's applications for emergency repairs or general repairs and for an order that the Landlord provide services or facilities required by law are dismissed with leave to re-apply.

Conclusion

The Tenant's application is allowed in part. The Tenant is entitled to compensation in the total amount of **\$750.00**. Pursuant to s. 72 of the Act, the Tenant may deduct this amount from his next rent payment when it is due and payable to the Landlord.