

DECISION

Dispute Codes: *MNDC, OLC, FF*

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss under the *Act* and for the filing fee. The tenant also applied for an order seeking landlord's action to comply with the *Act*. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the tenant established a claim for compensation for loss of quiet enjoyment? Was the landlord negligent in responding to the tenant's complaints? Is the tenant entitled to the recovery of her filing fee?

Background and Evidence

The tenancy started on January 01, 2009 for a fixed term of one year. A move in inspection was conducted on January 11, 2009 and by signing the report, the tenant acknowledged that the unit was in good condition and that she agreed to allow the kitchen floor to be replaced in the first week of February and the bath tub to be repaired when labour was available.

The tenant testified that the kitchen floor was replaced and some repair work was done starting in the last week of January for approximately two weeks. The tenant stated that during the time that the work was going on, she was inconvenienced and was deprived of the quiet enjoyment of her rental unit.

On March 21, 2009, the tenant reported a stain on the kitchen wall and on March 26, the resident manager and the plumber visited the unit to carry out repairs.

The tenant stated that the plumber cut a hole in the wall and pulled out insulation that was soaking wet and black in colour. The tenant immediately advised the plumber and resident manager that there was mould present in the wall.

The resident manager asked the plumber to assess the inside of the wall for the presence of mould and the plumber reported that there was no mould in the wall. The plumber returned on March 31 to complete the job. Prior to the return of the plumber, the tenant took samples of the insulation and the drywall and submitted them to a laboratory for testing.

The tenant received the results of the testing on April 05, 2009 and filed the report into evidence. The results indicate that out of a large number of mould types only two types were detected in the samples. One type was dominant in the insulation and in small numbers on the piece of drywall. Another type of mould was present in small numbers in the insulation only.

The tenant testified that she took some legal advice and based on this advice, she did not notify the landlord of the problem. The tenant looked for alternative accommodation and in the first week of June 2009, entered into a tenancy agreement at her current address. The tenant was advised by her legal consultant to give the landlord notice to end the tenancy just prior to the actual date of her move. Therefore the tenant served notice on June 22, 2009 and moved out on June 30, 2009.

Shortly after serving the landlord with a notice to end tenancy, the tenant made a verbal complaint to the resident manager regarding the presence of mould in the suite. The landlord took immediate action and ordered a mould test. He gave the tenant 24 hours notice to have the test conducted in the suite. The landlord filed the report which indicated that the test did not show the presence of mould.

A move out inspection was conducted and the unit was found to be in satisfactory condition. The landlord attempted to claim liquidated damages from the tenant as she had broken the lease and had not given the landlord 30 days notice to end the tenancy.

Since the tenant refused to forfeit her security deposit, the landlord returned the security deposit. The landlord stated that the other occupants of the building were complaining about the tenant smoking and it was in everyone's best interest for the tenant to vacate the rental unit and therefore he did not enforce liquidated damages.

The tenant stated that her health deteriorated due to the mould and filed a letter from her doctor stating that she is allergic to mould. The tenant was tested for allergies and the report indicates that the tenant is allergic to certain pollens, weeds, moulds and inhalants which include tobacco. The tenant also stated that her doctor advised her that in addition to mould, she was also allergic to tobacco. The tenant admitted that despite the warning, she smoked tobacco.

The tenant also filed health reports dating back from 2006 to the present time. These reports indicate that the tenant suffered from severe fixed airway obstruction in 2006 and emphysema in 2009.

The tenant has applied for a monetary order to compensate her for the loss of quiet enjoyment during the six months that she lived in the rental unit, for costs of moving, legal advice, laboratory tests etc as follows:

1.	Photographs, postal costs and address change	\$218.85
2.	Legal fees and parking	\$356.50
3.	Laboratory testing fee	\$168.00
4.	Dismantle and reassemble bed	\$588.00
5.	Moving costs	\$1069.42
6.	Vacuum cleaner	\$100.79
7.	Cancel post dated cheque	\$20.00
8.	Rent for six months	\$5550.00
9.	Labour costs to move	\$575.00
10.	Filing fee	\$100.00
	Total	\$8,746.56

Analysis

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

The tenant agreed to allow repair work inside the suite, but has applied for compensation for the loss of quiet enjoyment due to the inconvenience that she experienced for the duration of the work. Pursuant to *Residential Tenancy Policy Guideline 6*, temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

Section 6 of the *Residential Tenancy Policy Guideline*, also states that a landlord would normally be held responsible for a problem, if he was aware of a problem and failed to take reasonable steps to correct it.

In this case, the landlord was not notified of the suspected presence of mould after the tenant received the test results from the laboratory. The landlord received a verbal complaint from the tenant after she gave notice to end the tenancy and he acted upon it immediately.

Regarding the deterioration of the tenant's health condition, having viewed the documentation filed by both parties, I find that the tenant had a pre-existing condition prior to the start of the tenancy. The tenant testified that she smokes tobacco despite having been notified by her doctor that she was allergic to tobacco. In addition, if the tenant was affected by the mould, she would have moved out immediately upon receiving the laboratory test results or notified the landlord to have the mould eradicated. In this case, the tenant did neither.

Therefore, I find that the tenant has failed to prove that the alleged deterioration of the condition of her health was a direct result of the suspected presence of mould in the unit.

Based on the documentary evidence and sworn testimony of both parties, I find that the landlord responded to the tenant's complaints in a timely manner and conducted repairs to the unit with the approval of the tenant. Accordingly, I find that the tenant has not proven her case for compensation for the loss of quiet enjoyment.

The tenant moved out without giving the landlord 30 days notice and without informing the landlord regarding the suspected presence of mould. Therefore I find that the tenant did not give the landlord an opportunity to rectify the situation that the tenant says was the reason for her move. Since the tenant chose to move out, I find that she is responsible for the cost of moving and all the costs related to moving. Accordingly, the tenant's claim for moving expenses and other related expenses is dismissed.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the tenant's claim for the cost of mailing, photographs, legal fees, address change, parking is dismissed. Since the tenant has not proven her case for compensation, she is not entitled to the filing fee of \$100.00.

Conclusion

The tenant's application is 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: January 07, 2010.

Dispute Resolution Officer