

DECISION

Dispute Codes

MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement and a Monetary Order to recover the filing fee.

The tenant served the landlord by registered mail on March 22, 2010, 2009 with a copy of the Application and Notice of Hearing. The tenant amended her application on 29, 2010 and this amended application was also sent to the landlord by registered mail. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

The tenant and her appointed agent appeared and two agents for the landlord. All Parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss under the *Act*?

Background and Evidence

Both parties agree that this month to month tenancy started on May 01, 2006. Rent for this unit was \$1,250.00 which was due on the first of each month. The tenant paid a security deposit of \$600.00 on May 01, 2006. The tenant ended the tenancy with proper notice on April 30, 2010.

The tenants' agent testifies that the tenant seeks a Monetary Order for \$5,000.00 equivalent to four months' rent. The tenants' agent testifies that on January 18, 2010 the tenant noticed leaks along the ceiling above her bed and along the sides of the windows in the bedroom and living room. The tenants' agent testifies that the tenant informed the building manager and requested

a repair to stop the leaks and remove the water stains. The tenant submissions state that on February 01, 2010 she sent a letter to the landlord to address the issue of compensation for the water damage as she had not heard anything from the landlord concerning the repairs. In this letter the tenant informed the landlord that she would be deducting \$580.00 from February's rent as compensation for her loss. The tenant sent the landlord another letter dated the same day which discusses the leaks in her unit again and that she informed the building manager of these issues on January 18, 2010 and to date has had no meaningful solution offered to rectify the condition. The tenant also states that unless the landlord seals the leaks and removes the water stains in her unit before February 18, 2010 she will stop payment of rent.

The tenant claims the ceiling and window frames in her bedroom and living room were affected by mould which made her unit a health hazard. The tenants' agent states that they did not seek medical advice from a doctor but found they were coughing and sneezing while in the unit which stopped after they moved out. The tenants' submissions state that for three consecutive days from February 02, 2010 the building manager came with groups of workers to inspect the damage. After these inspections the tenant claims that she was not informed of when or what would be done to stop the leaks or remove the mould.

The tenants' agent testifies the tenant gave the landlord another letter on March 15, 2010 informing the landlord that she would no longer pay rent as he had not rectified the mould issues and the landlord has failed to provide a liveable and healthy environment. The tenant also demands the return of rent paid since January 18, 2010 and informs the landlord in this letter that she will be moving out no later than April 15, 2010. The tenants submit that the landlord posted a notice on her door on March 15, 2010 to inform the tenant that work would start on cleaning her ceiling the next day. The tenants' agent testifies that they refused access to the landlord and told her the work would have to be done after they had moved out as the tenants' belongings were in the process of being packed up for her move. On March 31, 2010 the tenant gave written notice to the landlord with an effective date to end tenancy of April 31, 2010.

The landlords' agent testifies that there was an issue with burst pipes outside the tenants' unit in December, 2009. When the tenant notified the landlords' agent about drips from her bedroom ceiling on January 21, 2010 an initial investigation took place and it was determined that the ceiling was solid concrete and had no water pipes run through it. The area above the tenants'

ceiling is a garden deck. The landlords' agent testifies that it was late at night and dark so a further investigation took place the next day to determine where the leak originated from. The landlords' agent testifies that there was no obvious place water could leak from, there were no signs of cracks in the grout, bricks or edges of the deck above. The landlord instructed his agents to use a window company who had repaired leaks in the past at the building as they have suitable equipment to reach areas outside the building. The landlords' agent testifies that she called the company that day and arranged for them to come on either January 27 or 28, 2010. The landlords' agent testifies that this company did not show up on the scheduled days and would not return her calls.

The landlords' agent confirms receipt of the tenants' letter stating she was withholding \$580.00 from her rent for February. She states that at that time the landlord was intending to give all the tenants on the third floor a rent discount due to the flood that occurred in December, 2009. It was agreed the tenants affected would receive a \$500.00 discount on their rent; however as this tenant had withheld \$580.00 the landlord decided not to pursue the matter.

The landlord told his agent to hire another person to see if he could make the necessary repairs to the leak. The landlords' agent and this maintenance man went to the tenants unit and noticed that the situation had gotten worse. There was now moisture along the ceiling edge and above the doors to her deck. The landlords' agent states that she was surprised that the tenant had not informed her that the leak had become worse. The landlords agents submissions also state that it was pointed out to the tenant that she had her heat cranked up very high and due to this, with the cold weather outside, it had created a large amount of condensation on her windows. It was suggested to the tenant that she opens her blinds and turn on the humidity fan in her unit to help dry out all the windows and reduce the humidity. The landlords' agent states that the tenant was unwilling to do this.

The landlords' agent and the maintenance man went onto the garden deck above to try to determine where the leak was coming from. They also looked at the building plans to see if the garden deck had a drain they could not see. Nothing was found at that time. The landlords' agent called another construction company and arranged for them to come the next day to have a look at the problem. That night the landlords' agents' husband went to the tenants unit to repair a leaky faucet and noticed the high levels of condensation in the tenants unit. He testifies

that he gave the tenants the same advice about turning on the humidity fan to help reduce the moisture in the unit and help prevent mould.

The landlords agent testifies that she contacted another construction company they came on February 02, 2010 to assess the leak. This worker assessed the problem and sent the landlord a quote for the work to investigate and repair the problem. On February 03, 2010 the landlord also sent a professional roofer to the building who also investigated the problem and by a process of elimination concluded that the problem was located in the garden deck. All possible reasons for a leak were repaired including replacing the deck membrane and leaky dryer vents. This work was completed on February 09, 2010.

The landlords' agent testifies that once the work was completed they had to wait for rain to determine that no further leakage would occur before starting work on the interior of the unit. The landlords' agent states that this was explained to the tenant at the beginning of March, 2010. The landlords' agent testifies that on March 15, 2010 the maintenance man could start the internal repairs in the tenants unit and 24 hours notice was given to the tenant. However, the tenants' boyfriend refused to allow them access to the unit until after the tenants had moved out.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; Section 32 of the Act states:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenant argues that the landlord is in breach of section 32(1) of the *Act* because he did not take steps to repair the leak or clean the mould from her unit within a reasonable time frame and the tenant suffered health issues because of the mould.

The landlord argues that they did everything possible to determine the cause of the leak and made repairs as soon as possible after notification of the leak. The landlord also argues that this leak had nothing to do with the leaking water pipe outside the tenants unit and she had been fully compensated with a rent reduction of \$580.00 for this inconvenience. The landlord also argues it was the tenants' actions in denying them access to her unit after the repairs were made to clean the mould and her refusal to turn on the humidity fan in her unit to dry up the condensation that may have contributed towards the growth of the mould.

When a tenants evidence is contradicted by the landlords evidence the burden of proof falls on the claimant to prove (beyond a reasonable doubt) that the landlord was negligent by not taken the necessary action to fix the leak or remove the mould in a reasonable time frame and the effects this had on the tenants health. In this instance the tenant would need to provide additional corroborating evidence to satisfy the burden of proof. I find the tenant has not provided any documentation from a specialist to determine that the mould was a health hazard or any documentation from a doctor to show that her health was at risk from the mould. While I accept that there was mould in the tenants unit, not all mould is considered hazardous to a human's health and without any documentation to satisfy me otherwise. I further find that the landlord and his agent took immediate steps to determine the cause of the leak and followed through with this with different contractors until they found one who was able to make the necessary repairs. Therefore, I find the landlord has acted in a responsible manner in determining and affecting the repairs and my only criticism would be that his agents failed to keep the tenant fully informed of the process to alleviate her fears.

I also find the tenant denied the landlords' agent and his contractor access to the unit when they were able to clean and repair the internal areas and remove the mould. The tenants' argument that the landlord only wanted access to prepare the unit for new tenants is conjecture on the tenants' part and has no bearing on my decision. If the tenant was so concerned about the potential health issues from the mould then I cannot understand why she denied the landlord

access to her unit on March 15, 2010 when she still had possession of the unit until April 30, 2010. It is therefore my decision that the tenant has not met the burden of proof in this matter.

Consequently the tenants' application for a Monetary Order for \$5,000.00 in compensation is dismissed and she must bear the cost of filing her own application

Conclusion

The tenant's application is dismissed in its entirety, 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: May 07, 2010.

Dispute Resolution Officer