

DECISION

Dispute Codes

ERP

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for an Order for the landlord to make emergency repairs for health or safety reasons.

The tenant served the landlord by registered mail on April 14, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both the landlord and tenant appeared and having heard the evidence of the parties, under oath, and having given the parties the opportunity to give their evidence orally and to provide written and documentary evidence, and to cross-examine the other party and to make submissions to me, I have determined:

Issues(s) to be Decided

- Is the tenant entitled to an order for the landlord to make emergency repairs for health and safety reasons?

Background and Evidence

Both Parties agree that this tenancy started on August 01, 2009. This is a fixed term tenancy for one year and rent for this unit is \$1,200.00 per month which is paid on the first of each month. The tenants paid a security deposit of \$600.00 on August 01, 2009. A move in condition inspection was conducted on July 18, 2009.

The tenant testifies that he lives in the rental unit with his wife and two adult children. After living in the property for some months his son started to become ill and his asthma symptoms became worse. The tenant stated that he investigated the cause of this and found that a contributing

factor could be mould spores in the property. The tenant claims he then began to look for mould in the unit and found a mould problem in the bathroom and around the bedroom window.

The tenant states he contacted the landlord who investigated any external source of water seepage or leaks into the house from the roof, walls, guttering or windows. No external source of moisture was found. The tenant still had concerns about mould in the property and contacted ABM Environmental Incorporated which is a company who conduct mould inspections and air testing.

The tenant has provided a copy of the report from this company which indicates that the bathroom shower/tub tiles were leaking with elevated moisture detected behind the tiles in several areas. The paint applied to the shower window frame was chipped and mouldy. The bathroom vanity has elevated levels of moisture between it and the bathtub with visible mould behind and inside the vanity. The bedroom windows and most of the windows in the house have visible mould on the frames. This report also indicates that the humidity levels in the house were normal.

The report also shows the results of air sampling to determine if a fungal problem is present in an indoor environment. The air sample was sent to a laboratory where any spores present are identified and counted. It was determined from the laboratory report that the level of spores in the indoor environment is elevated with penicillium/Aspergillus spores and indicates a past or present source of mould within the home.

The report also reaches the conclusion that there is likely to be significant mould behind the bathroom tiles due to the moisture levels which will cause the dry wall and wood structures to grow mould. The vanity and tub are poorly designed to allow water to get behind the vanity and they recommend the vanity unit to be replaced and designed to prevent water getting in behind. The report also suggests the flooring of the bathroom may have moisture and may require replacement. The windows in the house are single pane with aluminum frames which attracts moisture during the winter months and this condensation leads to the growth of mould. They recommend the windows are replaced to double paned, vinyl frame windows to prevent condensation and to repair the dry wall around the window frames.

The tenant testifies that his family have gone to great lengths to ensure they wipe the condensation from the windows as much as possible but when it is present 24 hours a day this can become difficult at times. He also claims the rental unit is kept clean and mould is wiped away, the bathroom fan is used when ever his family take a shower and the shower curtain is used inside the bathtub to prevent water seeping onto the floor.

The landlord testifies that he received a request from the tenant to inspect the premises regarding an issue with condensation around the windows. The landlord testifies that he carried out an inspection and found no leak, but condensation was present on the windows. The landlord states that he explained to the tenant that he must ensure the windows and area around the windows are cleaned regularly including the removal of any mould growth. The landlord invited a company dealing in roof and drainage to inspect the property with him and the tenant to ensure no external problems existed that would cause leaking of water inside the property. The landlord states the tenant did not ask him to inspect the bathroom on that day but he did subsequently inspect it on May 22, 2010. The landlord claims that they inspected the tiles and grout and applied pressure on the tiles to see if any moisture build up had occurred behind the tiles. No evidence was found at this time that the tiles or grout were damaged or moisture was behind them. The landlord claims there was evidence of soap scum and mildew on the grout between the tiles which he claims shows the tenants had not cleaned the shower.

The landlord also testifies that previous tenants had not complained about mould issues and no mould was identified at the move in condition inspection. The landlord alleges that the tenants were sent a letter in January regarding water coming from the shower and dripping through the floor to the basement ceiling. He claims any mould or moisture could be from the inadequate shower curtain coverage and from the tenants not cleaning up water spillages from the bathtub. The landlord also argues that the tenants have not taken reasonable care in cleaning and maintaining the bathroom, bedroom windows and window tracks.

The tenant argues that his family do ensure the shower curtain is inside the bath tub when they take a shower and the bathroom is cleaned on a regular basis. He states that this leak could be from moisture getting under the tiles because they are not grouted correctly.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I have determined from the evidence presented that the ABM Environmental company did find there is mould at the property and spores in the air of an elevated amount. While I accept that the tenants have not provided any medical information concerning the affects to their health I find there is still an issue in the rental unit with mould.

The landlord argues that this is the responsibility of the tenants as they have not taken reasonable care in cleaning and maintaining areas of the property which would contribute to the condensation and consequently the growth of mould however the landlords' evidence does not conclusively show that the tenants have not acted in a responsible manner in this matter.

Section 3291)(a)(b) of the Act states:

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.

It is my decision therefore that the landlord has not provided or maintained the rental unit in a state of repair that makes it suitable for occupation by the tenants as the report from ABM environmental company clearly indicates the condensation and mould issues present in the property. Consequently I find the tenant is entitled to an order for the landlord to make repairs to the rental unit.

Conclusion

I HEREBY ORDER the landlord to make repairs in the bathroom to the walls, tiles, windows and vanity unit in such a way to elevate the moisture build up and any mould present in this area.

I HEREBY ORDER the landlord to ensure the windows are repaired in such a way that elevates the condensation problems.

I HEREBY ORDER the landlord to make any necessary repairs to the dry wall around the front bedroom window to eradicate any mould growth in this area.

I HEREBY ORDER the landlord to ensure the necessary repairs as detailed above are completed with two months of receiving this decision.

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: June 04, 2010.

Dispute Resolution Officer