



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act*(Act), regulation or tenancy agreement, an Order for the landlord to comply with the Act, an Order for the landlord to make emergency repairs to the unit, an Order for the landlord to make repairs to the unit, an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided and a Monetary Order to recover the filing fee.

The tenant served the landlord by in person on June 03, 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. The first hearing was adjourned to allow the landlord to provide the Dispute Resolution Officer with an independent inspection report concerning the alleged mould in the unit. The hearing was reconvened to today's date.

Both parties appeared, 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

- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to comply with the Act?

- Are the tenants entitled to an Order for the landlord to carry out emergency repairs to the unit?
- Are the tenants entitled to an Order for the landlord to carry out repairs to the unit?
- Are the tenants entitled to reduce their rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

Both Parties agree that this month to month tenancy started on September 01, 2002 and a new tenancy agreement was entered into on August 15, 2007 when the second tenant joined the tenancy. Rent for this unit started at \$1,250.00 and has increased over the period of the tenancy to \$1,444.00. Rent is due on the first of each month. The tenants paid a security deposit of \$625.00 on September 01, 2002.

The tenant testifies that at a previous hearing the landlord was directed to inspect the attic and crawl space after the work on the roof replacement finished and to take any necessary steps to treat or remove any mould present. The tenant claims the landlord has not dealt with the mould present in these areas and seeks a rent reduction of \$244.00 per month until the landlord remedies the mould issues. The tenant also seeks \$5,000.00 in compensation from the landlord for having to live with this mould for two years and also seeks to recover the cost of his allergy medications for eight months.

The tenant present states that he has been notifying the landlord in writing of the mould problem in the house since 2008. He claims that this affects his quality of life in his home as he has a compromised immune system. The tenant states the shingles have now been replaced on the roof and the landlord has removed some mould from the crawl space but some is still in place.

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The tenant states a health inspector came to inspect the house from the City and found some deficiencies. On June 22, 2010 some work was completed by a contractor and the City inspector is now satisfied. The tenant states that despite this there is still mould behind the bathroom walls. The tenant states he has sent a sample of some mould to a laboratory for analysis. The tenant claims the mould in the house is dormant at present due to the dry weather but will become active again when it gets damp.

The landlord testifies that the attic and crawl space are not part of the tenants living areas. The landlord states the roofers have replaced some installation and fitted roof vents to ventilate the attic space. The tenant argues that he has rented the whole house from the landlord and his tenancy agreement does not state that he cannot use these areas.

The tenant states he has offered his labour to the landlord to carry out required work in the bathroom to eradicate the mould and to insulate the attic. The tenant seeks an Order for the landlord to comply with the Act and ensure all repairs are completed to the house to make it fit to live in. The tenant also seeks an Order for the landlord to make emergency repairs to a leaky pipe in the crawl space.

The landlord asked for time to have the house independently tested for mould and the hearing was adjourned to allow the landlord opportunity to arrange this. At the reconvened hearing the landlord presented the report from the company that carried out the testing of the house. This report shows that the sample of indoor air to outdoor air is comparable and falls within the acceptable standards. The landlord states that any mould present is naturally occurring. The landlord cross examines the tenant and asks if his allergies are affected because of allergens in the air. The tenant replied that they were. The landlord states that the report states that the mould is not airborne. The tenant states that this inspection was carried out in the dry session and the results would be different if they had been done in the winter.

The landlord acknowledges that the tenant attending has a higher susceptibility to allergens because of his compromised immune system and states that while he sympathises with the tenants' condition he cannot make their home a sterile environment and that what they are asking goes beyond reasonable standards. The landlord states he is willing to allow the tenants to break their lease without the correct notice period if they feel the premises are untenable. The tenant states they do not want to move out they just want a home to live in without having to take medication for allergies. The tenant states that when he is away from the home his symptoms cease.

The landlord states that they have replaced the shingles on the roof and replaced some insulation with mould, they have carried out repairs in the bathroom, they have painted and replaced the carpet and had an inspection done. The landlord also claims that other work as recommended by the inspection report is also going to be carried out.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both Parties. I reference the inspection report carried out by AMEC, in which this independent company carried out a visual inspection of suspected mould growth and conducted air and building material samples for suspected visible mould growth (SVMG) at the rental property. This inspection was carried out on two separate dates in July, 2010. This report states that SVMG was not observed in the inspected areas within the "living space". In the "non- living" spaces i.e. the attic and crawl space dark stains were observed. It was also observed that the bathroom exhaust fan appeared to discharge directly into the attic space and this moisture could lead to increased moisture levels and potential mould growth.

In the crawl space SVMG was not observed on building materials or stored items however it was noted that further monitoring of efflorescence on a small section of the concrete wall in

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the crawl space should be carried out to ensure it does not create a condition which could become a mould issue. It was noted in this area that a water pipe should be insulated to prevent moisture entering this areas.

The inspectors carried out a moisture test on the drywall at random locations in the property and it was noted that all readings fell within the dry level. Indoor temperatures and humidity readings were also taken and these readings also fell within the comfortable levels. This report also indicates that two common types of mould associated with water damaged buildings were not present either inside or outside the home.

The report also shows that the tenant's samples given to the laboratory for analysis shows that there were two common types of mould present and one unidentified type of mould present. These samples were taken from the insulation in the attic and a roof plywood sheet in the attic.

The report goes on to state that moulds typically known to associate with water damaged buildings was not present and no SVMG was observed in the tenants living space. The SVMG identified in the attic and crawl space was not uncommon in these areas and was not likely to impact on the overall air quality in the "living space".

The tenant argues that as this inspection was conducted during the summer months the problem will worsen when the weather becomes wet, however he has nothing to base this assumption on and I find that no the landlord has repaired the roof to the property that this may well alleviate any further problems with moisture entering the property. Therefore it is my decision that although mould was found in the attic area the roof has now been repaired and as this is a non- living area it has not affected the air quality in the tenants living areas.

It is therefore my decision that the tenants cannot expect a sterile environment as for their living area and it would be unreasonable for the landlord to have to create one to accommodate the tenants compromised immune system or his susceptibility to allergens.

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Consequently, I find the tenants have not conclusively proven that the home has a high level of mould within it which has affected his health and I dismiss his application for compensation of \$5,000.00 for a reduction in the value of his tenancy.

With regard to the tenant's application to reduce their rent by \$244.00 per month until the landlord has made repairs to the property, I find the report submitted by the landlord does make certain recommendations for further work to be completed to prevent mould growth. However, the landlord has agreed to do this work and I find the tenants claim to be excessive. Consequently I find the tenant is entitled to a rent reduction of **\$100.00** per month until such a time that the landlord ensures the bathroom exhaust fan is not discharged into the attic space, the domestic water line in the crawl space is properly insulated to prevent condensation and the penetrations and openings between the attic, crawl space and "living areas" are sealed.

I further Order the landlord to carry out periodic inspections of the attic and crawl space to identify any moisture buildup or sources and take corrective action if necessary.

With regard to the tenants application for the landlord to make emergency repairs to the rental; property, I find the tenant has provided insufficient evidence to show that emergency repairs are required and consequently this section of his claim is dismissed..

With regard to the tenant's application for the cost of allergy medications, as there is no conclusive proof that the tenants allergies are caused by mould in the rental unit, this section of their claim is dismissed.

As the tenants has been partially successful with their application I find they are entitled to recover the cost of their filing fee from the landlord pursuant to section 72(1) of the *Act* and they may deduct that amount from their next rent payment when it is due and payable to the landlord.



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Conclusion

I ORDER the landlord to make the following repairs to the rental property as soon as possible:

- a) ensures the bathroom exhaust fan is not discharged into the attic space,
- b) ensure the domestic water line in the crawl space is properly insulated to prevent condensation
- c) ensure the penetrations and openings between the attic, crawl space and “living areas” are sealed.

I ORDER the tenant to reduce his rent by **\$100.00** until such a time as the repairs are carried out by the landlord.

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: September 10, 2010.

Dispute Resolution Officer