

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the tenant is entitled to the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on April 15, 2009 and ended on April 30, 2010. Rent of \$1,100.00 was payable in advance on the first day of each month. A security deposit of \$500.00 was collected on April 8, 2009. There is no move-in or move out condition inspection report in evidence.

In mid December 2009, approximately eight months after the start of tenancy, the tenant reported to the landlords over the telephone that she had discovered mould "inside one of the cabinets as well as on the floor behind the television." She claims in her application that there was also "condensation and water appearing on the windows....most noticeable and clearly evident in the bedroom and living room areas." The landlords state that they visited the unit later that evening in response to the tenant's call. They confirm they found mould and suggested to the tenant that she "use her fans, kitchen and bathroom, and to open the vent windows in the living room when cooking or showering." It also appears there was a conversation between the parties about the potential introduction of a dehumidifier, but there are differing perspectives on the understandings reached as a result of the conversation; the tenant's view appears to be that the landlords should have proceeded to simply provide a dehumidifier,

whereas the landlords take the position that the tenant was not keen to have a dehumidifier, in part at least because it would take up too much space and the condensate drain pan would require emptying.

The following day, the landlords again attended the unit and undertook to clean up all visible mould, some of it damp, some of it dry. As well, the landlords applied an insulation tape on the interior surface of the window frames. Several days later the landlords contacted the tenant by telephone to inquire as to whether there had been any improvement to the situation. In their submission the landlords state, in part:

[the landlord] phoned her to find out if this tape was making any difference in the situation and [the tenant] stated that it was okay and she would remove any condensation on the window ledge if and when it appeared.

We heard nothing more from the tenant until March 28, 2010 (3 -1/2 months) later.

The tenant submits that she “made no further complaints until March 28, 2010,” which is the day after she claims to have discovered mould on the underside of her mattress. Around this time she also discovered mould on the backside of a chair. Subsequently, on March 31, 2010, over the telephone the tenant provided the landlords with one month’s notice of her intent to vacate the unit. Thereafter, her notice was provided in writing and she vacated the unit at the end of April 2010.

The landlords state that following the end of tenancy, some cleaning, painting and minor repairs were undertaken in the unit before new tenants were found towards the end of May 2010. The landlords claim there have thus far been no moisture and/or mould related problems reported to them by the new tenants.

During the hearing the parties also exchanged views on work completed at the unit prior to the start of the subject tenancy. The landlords state that remedial work was required, in part at least, because there were “no weep holes” in the exterior brick facing, and a window ledge was “wrongly slopped.” However, these problems were remedied prior to

the start of this tenancy and were covered by warranty. The landlords assert that the tenant's problems with moisture and mould arose principally from her failure to routinely wipe moisture from the inside of windows and window sills, and to habitually ventilate the unit, as well as (for reasons related to cost savings) her reluctance to use the electric baseboard heaters in order to keep the unit sufficiently warm and dry. In their submission the landlords further note that "a large and heavy dresser was uptight against the outside wall beside the chair and blocking the only electric heating element in the room." The landlords also claim the tenant reported to them that the unit she previously rented had sustained flooding, and the landlords query whether some of the tenant's belongings may have still been damp when she moved into the subject unit.

Analysis

Section 32 of the Act speaks to **Landlord and tenant obligations to repair and maintain**, and provides in part as follows:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Clause 27 of the tenancy agreement addresses "**REPAIRS**," in part as follows:

Landlord's obligations:

The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law. If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may seek an arbitrator's order under the Act for the completion and costs of the repair.

Tenant's obligations:

The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property. If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may seek a monetary order through dispute resolution under the Act for the cost of repairs, serve a notice to end a tenancy, or both.

The tenant must ensure that the rental unit is appropriately ventilated, exhaust fans are regularly used, and must follow reasonable housekeeping practices, to minimize the presence or accumulation of moisture, thus preventing the occurrence of mould or mildew.

Based on the documentary evidence which includes photographs, hydro bills, a letter from the local government's district property use inspector, and testimony of the parties, the specific aspects of the tenant's claim and my findings around each are set out below. The costs claimed by the tenant reflect details set out in her most recent

documentary submission on October 5, 2010. While I have turned my mind to all aspects of the information presented, not all particulars of the arguments or submissions are reproduced here.

\$500.00: handmade quilt. The tenant testified that she disposed of the quilt after discovering there was mould on it. Had the quilt been damp from flooding in the previous unit when stored in the subject unit, the growth of mould would have been fostered. In any event, further to the absence of any documentary evidence in support of its replacement value, I find there is insufficient evidence that the tenant's decision to dispose of the quilt was the result of failure by the landlords to properly maintain the unit. Accordingly, this aspect of the claim is hereby dismissed.

\$169.00: replacement chair. I note that while there is an advertisement showing the purchase value of a replacement chair, evidence does not apparently include a receipt to support that such a purchase was made. In their evidence the landlords submit that the growth of mould may have been fostered by the positioning of the chair close to a wall and near windows and window sills where condensation had been allowed to gather. I also find there is a reasonable prospect that the chair was damp when moved into the subject unit. On a balance of probabilities, I find that excessive moisture in the unit arose largely from a lack of ventilation, insufficient heat, and insufficient attention to removal of excess moisture from windows and window sills, all of which were within the tenant's power to control. In summary, I find that mould found growing on the chair was not the result of the landlords' failure to properly maintain the unit. This aspect of the claim is, therefore, hereby dismissed.

\$349.00: replacement mattress. Evidence includes a receipt for purchase of a mattress prior to the time when this tenancy started, and photographs purport to show mould growing on this same mattress. However, there is no evidence that the tenant made a point of showing this particular area of mould growth to the landlords.

Correspondence to the landlords from the district property use inspector, makes reference to areas where mould has been detected is limited to “the aluminum windows frames, sink cabinet and drawers.” There is no indication that mould was found elsewhere, such as, for example, the floor beneath where the bed had been located.

Where it concerns hydro bills, I find that standing alone without comparative hydro bills from either other similarly situated units in the building, or from this particular unit during a previous year, they are insufficient evidence to support the tenant’s claim that she was diligent in her efforts to maintain a level of warmth and dryness in the unit sufficient to hamper / prevent the growth of mould.

On a balance of probabilities, I find that for reasons related principally to inadequate ventilation, inadequate heat, and inadequate attention to removing excess moisture from windows and window sills, there is insufficient evidence to support this aspect of the claim, and it is hereby dismissed.

\$199.00: queen size bed linens. There is no purchase receipt apparently included in the evidence and the tenant notes that this is the “approx cost of replacing discarded linens.” Similar to the quilt, had dampness remained from flooding in the previous unit, storage could have fostered the growth of mould. In summary, I prefer the evidence of the landlords that carpet beneath the bed, a space where the tenant claims to have stored certain items, was found to be dry. In the absence of persuasive evidence that any mold on bed linens was the result of failure by the landlords to properly maintain the unit, this aspect of the claim is hereby dismissed.

\$400.00: picture rematting x 2. The tenant testified that as she did not ultimately have her two pictures rematted, she did not actually incur the cost anticipated in her application. Accordingly, this aspect of the claim is hereby dismissed.

\$54.50: emergency vet visit. Evidence submitted by the tenant includes a receipt for payment, as well as a report from the veterinarian of the “presenting complaint,” “examination findings” and so on. However, there is no definitive documentary

evidence to support the claim that the pet's symptom(s) or the treatment(s) prescribed bore any relationship to moisture or mould in the unit, or failure on the part of the landlords to properly maintain the unit. Accordingly, this aspect of the claim is hereby dismissed.

\$477.06: *moving expenses*. The tenant vacated the unit at the end of April 2010 after giving notice to end the tenancy.

Further to all of the above, as a result of the tenant's very limited expression of concern to the landlords about the condition of the unit (twice in a year-long tenancy), and the immediacy with which the landlords responded to the concerns in the first instance, and quickly followed up with the tenant, I find there is insufficient evidence that the tenant's decision to move out and incur related costs was the result of failure on the part of the landlords to properly maintain the unit. In the result, this aspect of the claim is hereby dismissed.

\$59.00: *delivery of replacement furniture*. I note the delivery receipt shows that items delivered included a bookcase, which is not one of the possessions identified as damaged by mould. In any event, as I have found that the tenant's decision to replace certain furniture was not evidently the result of the landlords' failure to properly maintain the unit, I find the tenant has not established entitlement to the delivery costs of replacement furniture. This aspect of the claim is hereby dismissed.

\$42.00: *cost of address change*. For reasons already set out above under "moving expenses," this aspect of the claim is hereby dismissed.

\$550.00: *half month's rent for December 2009*. As previously stated, the tenant first reported her concerns to the landlords around mid December 2009. The landlords responded by visiting the unit later that evening and then returning to the unit again very shortly thereafter. The landlords undertook to remove visible mould, some of it dry, and install insulation tape on window frames. Following this they inquired of the tenant as to the status of the unit and any remaining concerns. In response, the tenant gave no

indication that she had ongoing concerns until late March 2010 when she again reported the discovery of mould. Prior to the filing of her application on June 25, 2010, there is no record of the tenant having informed the landlords of any view she may have formed that their work in December 2009 was “incompetent and incomplete.” On balance, I find there is insufficient evidence of entitlement to the compensation claimed, and this aspect of the application is hereby dismissed.

\$3,300.00: *three months’ rent (January, February & March 2010)*. Further to the information and findings set out immediately above, there is no documentary evidence that the tenant was dissatisfied with the landlords’ response in December 2009 to her reports of moisture and mould in the unit, until she gave notice to end the tenancy at the close of March 2010, which was three and one half months later. While the tenant had the option to apply for dispute resolution, seeking a reduction in rent for repairs, services or facilities agreed upon but not provided, and / or an order instructing the landlords to make repairs to the unit, she did neither. Further, while in her application the tenant asserts that the unit was “extremely cold at all times,” there is no evidence that the tenant brought this particular concern to the attention of the landlords. On balance, I find the tenant has provided insufficient evidence to prove entitlement to the compensation claimed and this aspect of the claim is, therefore, hereby dismissed.

\$100.00: *filing fee*. As the tenant has not succeeded in this application, her application to recover the filing fee is hereby dismissed.

Conclusion

Pursuant to all of the above, the application is hereby dismissed.

DATE: November 19, 2010

Dispute Resolution Officer