



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

Decision

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

Introduction

This hearing was to deal with an application by the tenant for an order to cancel a Ten Day Notice to End Tenancy for Unpaid Rent, a monetary order for compensation for damage or loss under the Act, an order that the landlord comply with the Act and complete repairs or emergency repairs and a rent abatement allowing the tenant to reduce the rent for repairs, services or facilities agreed upon but not provided. Both parties appeared and gave evidence.

At the outset of the hearing the parties advised that the tenant had the paid rent owed within 5 days of receiving the Ten Day Notice to End Tenancy for Unpaid Rent. Under the Act this cancelled the Notice. Therefore the portion of the tenant's application requesting that the notice be cancelled is moot.

The remaining issues to be determined based on the testimony and the evidence are:

- Whether the tenant is entitled to a monetary order to compensate for damages
- Whether the tenant is entitled to a rent abatement based on condition issues that exist in the unit that continue to deprive the tenant of services and facilities required by law.
- Whether the landlord has failed to meet its obligations under the Act to repair and maintain the unit and should be ordered to do so.

The burden of proof is on the tenant.

Preliminary Issue: Submission of Evidence

The tenant had submitted an evidence package received by Residential Tenancy Branch on January 14, 2010. The landlord testified that this evidence package was never served on the landlord.

I note that the Landlord and Tenant Fact Sheet contained in the hearing package states that "*copies of all evidence from both the applicant and the respondent and/or written*

notice of evidence must be served on each other and received by RTB as soon as possible.” Section 88 and 89 of the Act specifies how documents must be served.

In addition to the above, Residential Tenancy Rules of Procedure, Rule 3, requires that the applicant must submit evidence to the Residential Tenancy Office and serve all evidence being relied upon to the respondent at the same time as the application is filed if possible or at least (5) days before the dispute resolution proceeding.

In the case before me, I find that, although the evidence was submitted to the Dispute Resolution file, none of the tenant’s evidence was served on the landlord. However, the tenant’s evidence consisted of a copy of the Site Inspection Report from the Health Authority dated January 10, 2011 with pictures attached. After confirming that a copy of this communication was already sent by the Health Authority directly to the landlord, I find that the tenant’s evidentiary submission will be accepted.

Background and Evidence

The tenancy began on March 1, 2009 with rent of \$1,400.00 per month and security deposit of \$700.00. The tenant testified that when they moved into the unit, it had been freshly painted and there was no sign of a mould problem. However, according to the tenant, it became evident there was an issue with mould when discoloration of the walls and ceilings started to occur. The tenant’s clothing in one closet also became mouldy. The tenant testified that in speaking with former residents they discovered this was a long-standing problem with the rental unit which was never disclosed by the landlord.

The tenant stated that when the tenant complained, the landlord had sent in a contractor to measure the air moisture, but nothing more had been done. The tenant stated that in frustration they also contacted the local Health Authority and an environmental health officer attended the site. The officer issued a letter with the findings along with photos on January 10, 2011 and sent a copy to the landlord. A copy of this letter was in evidence. It stated:

“At the time of inspection it was noted that there was significant mould growth throughout the residence, that ventilation in the residence was poor. (see attached pictures).

There is also a safety issue due to the failure of the roof which is leaking allowing water to drip through the bathroom ceiling in two places; in addition the gyproc wall on the south side of the residence is soft and spongy to the touch. (see attached pictures)”

The tenant stated that when the roof had started to leak, the tenant contacted the landlord who quickly responded by attempting roof repairs. However, despite the

landlord's repeated efforts to repair the roof, the water infusion continued until recently when the landlord put a tarp over the roof. The tenant is of the opinion that the leaks in the roof are the primary cause of the mould.

The tenant is seeking an order to force the landlord to have the roof fixed and to completely resolve the mould problem. The tenant is also seeking compensation in the form of a rent abatement of \$700.00 for having to endure the unhealthy conditions.

The landlord acknowledged that there was a leaking roof and did not dispute that there was mould in the rental unit. However, the landlord disputed that the problems predated this tenancy. The landlords testified that they only recently learned about the mould and acted immediately to hire a specialist to measure the air quality. According to the landlord it was found that there was excessive moisture in the air and that the plastic that the tenant put over the windows may have caused or at least contributed to the problem. The landlords stated that they were willing to address the mould problem and follow recommendations made by the mould specialist to eradicate the problem.

With respect to the roof, the landlord stated that this problem was never ignored. In fact, the landlord said that they always responded promptly to the tenant's complaints but were not successful in finding the place where the roof was leaking. The landlord pointed out that the leaks have now been stopped by the tarp placed over the roof and the landlord committed to continuing to search for the leak. The landlord stated that the tenant's monetary claim for \$700.00 was excessive given that only one room was being significantly affected and only during rainy periods.

Analysis

In regards to the tenant's claim for the repairs, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit.

A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. And a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

I find that based on the testimony of both parties and the report from the health authority that the landlord has failed to meet its responsibilities under the Act in regards to the leaking roof situation. I accept the landlord's testimony that the landlord did repeatedly attend the site when required and did take action to investigate and address the complaints about the leaking roof. However, I find that the landlord did not employ sufficient measures to ensure that the condition of the roof complied with the health, safety and housing standards required by law to make the unit suitable for occupation

by a tenant. I find that the landlord's efforts appear to be focussed on finding out where the roof was leaking by trial and error, thereby subjecting the tenant to prolonged inconvenience and risk. In particular, I find that the continued leaking of water into the framing and drywall over time would likely affect the infrastructure and did facilitate the growth of mould, as stated in the report. Given that the roof was over 15 years old, I find that it was incumbent upon the landlord to obtain an inspection of the roof by a qualified roofing professional to determine what the appropriate course of action should be. Accordingly, I find it necessary to order the landlord to engage a roofing professional to inspect the roof and to issue a written report that must be shared with the tenants.

I find that the landlord did apparently act to engage a professional mould specialist and evidently obtained a report which was not in evidence and was not given to the tenant. I accept that this report likely does mention that the tenant's practice of placing plastic over the windows would impede air flow necessary to discourage mould growth. The tenant has agreed to remove the plastic. However, with no way to know what other items and recommendations were reported in the document, I am not in a position to order that any specific measures be implemented by the landlord. Accordingly, I find it necessary to order that the landlord give the tenant a copy of the report from the mould inspector/specialist and that the landlord follow the recommendations made.

The tenant had also requested an order to force the landlord to do emergency repairs. Section 33(1) of the Act describes "emergency repairs" as repairs that are (a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and (c) made for the purpose of repairing such things as major leaks in pipes or the roof, damaged or blocked water or sewer pipes or plumbing fixtures, the primary heating system, the electrical systems or other serious problem of this nature. Section 33(5) requires a landlord to reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord, and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. If a landlord does not reimburse the tenant, as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I find that it is not practical for the tenant to have the roofing repairs done themselves and be reimbursed by the landlord, due to the fact that this expenditure is likely to be substantial and may entail purchasing a new roof. A roof leak of this nature is considered to be an emergency situation and I do not consider the landlord's action in placing a tarp over the leaking roof, effective as it may be, would qualify as a valid "emergency repair". That being said, as long as this interim measure works for the time being until the landlord can permanently address the actual problem in the very near future, I am not going to order the landlord to make emergency repairs at this time.

Should the roof leaking recur, the tenant is at liberty to make another application seeking emergency repairs.

The tenant's application requested that the rent be reduced for repairs, services or facilities not provided. In regards to compensating a party for the loss of services or other damages suffered, I find that section 67, permits a party to be reimbursed for losses and damages if the burden of proof has been met to establish that the other party did not comply with the Act and that this non-compliance resulted in costs or losses, pursuant to section 7. The evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, I find as a fact that the landlord there may have been long-standing issues with mould and water infusion which constituted a violation of the Act on the part of the landlord and I find that during this tenancy this has been an issue that affected the value of the tenancy.

Accordingly, I find the following remedy is warranted:

- An order that the landlord provide a copy of the report it received from the mould inspector/specialist and that the landlord is required to follow the recommendations made.
- An order that the landlord immediately engage a qualified roofing professional to inspect the roof and to issue a written report, a copy of which will also be provided by the landlord to the tenants.
- An order that, beginning in March 2010, the tenant is entitled to a rent abatement of 15%, (or \$210.00 each month), if the landlord has not followed and completed all of the recommendations in the report issued by the roofing professional. As of March 1, 2011 the rent will therefore be set at \$1,190.00 and will remain at this rate unless and until the measures recommended by the roofing specialist are implemented and completed. The rent will revert back to \$1,400.00 per month as

of the first day of the month following completion of the repairs or replacement of the roof.

- A monetary order in favour of the tenant reflecting a retro-active rent abatement for a lump-sum of \$250.00 plus the \$50.00 cost of the application to compensate the tenant for the past number of months during which the tenant was forced to endure these conditions. The tenant is entitled to deduct an additional \$300.00 from the next monthly rent owed as a one-time abatement.

Conclusion

Based on the testimony and evidence discussed above, I hereby issue an order that the landlord provide a copy of the report it received from the mould inspector/specialist and that the landlord is required to follow the recommendations made.

I further order that the landlord consult a qualified roofing professional, obtain a report, share the report with the tenants and implement the recommendations made.

I further order that as of March 1, 2011 the tenant's rent will be subject to an abatement of \$210.00 pending the implementation of the recommendations and completion of the repairs pursuant to the report from the roofing professional and will remain at \$1,190.00 until the first day of the month following the completion of the roofing repairs.

I further order that the tenant is entitled to deduct a lump-sum abatement of \$300.00 for past devalued tenancy as a one-time abatement from the next rent owed.

These orders must be served on the landlord by the tenant and are enforceable through dispute resolution.

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 2011.

Residential Tenancy Branch