

DECISION

Dispute Codes MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make repairs to the unit, site or property; for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

Both parties attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence.

The landlord provided an evidence package to the Residential Tenancy Branch and to the tenant, but that evidence was not received within the time provided for in the *Act* or the Rules of Procedure. The tenant consented to that evidence being considered, and the tenant also provided an evidence package to the Residential Tenancy Branch and to the landlord. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord make repairs to the unit, site or property?

Is the tenant entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

This month-to-month tenancy began on September 1, 1975 and the tenant still resides in the rental unit. Rent in the amount of \$1,000.00 per month is currently payable in advance on the 1st day of each month, and there are no rental arrears. In August, 1975, a previous landlord collected a security deposit from the tenant in the amount of \$96.00.

The tenant testified that the parties appeared at dispute resolution in June, 2010 and a Dispute Resolution Officer at that time ordered the landlord to effect repairs, and provided a 30 day time limit to complete the repairs and to investigate the origin of mould that has grown in the rental unit. She stated that the landlord had removed the gyprock, filled it with gyprock mud, but did not return to finish. The ceilings and repairs made by the landlord are still not sanded and have not been painted. Photographs of the rental unit were provided by the tenant. She further testified that the landlord did not investigate the origin of the mould, but rather removed gyprock and covered it back up again. That work was completed on June 21, 2010 but no one has been back until last Monday. On Monday workers sealed the patches with gyprock mud on the living room ceiling, laundry room ceiling, kitchen ceiling, kitchen window sill and 2 areas by the living room window and in the closet, the master bedroom ceiling and the window wall, as well as the 2nd bedroom window wall and top left side of the closet door. None of the areas have been sanded or painted. Further, a chunk fell out of the kitchen ceiling. The tenant called the landlord and someone arrived to tape it and re-mud. The tenant feels the landlord returned to complete the repairs ordered after she served the landlord with a copy of the Application before me.

The tenant claims retroactive rent abatement to \$525.00 per month for rent which is the rent amount payable when the landlord bought the house. She stated that her application is to reduce rent to that amount from August 1, 2010 because the Dispute Resolution Officer had ordered that the repairs be completed within 30 days, and the tenant feels a grace period to the end of July is appropriate. She also claims interest on that money and provided evidence of earning 2.5% interest on her investments which would have been payable to her had she not used the money for rent.

The landlord testified that he went to fix the mould issue in June. He stated that the building is 45 to 50 years old. He also testified that he looked behind the wall where the drywall was cut out and no mould was found, nor was the area wet. He asked the tenant to move her belongings and then call him and he'd be back. The tenant didn't call, so the landlord didn't return.

Analysis

The Decision of the Dispute Resolution Officer dated June 3, 2010 was provided to me by the tenant. That Decision, assuming it was mailed to the parties, was deemed to be received by the landlord on June 8, 2010. The Decision placed the onus on the landlord to complete all repairs within 30 days. The evidence of the landlord is that he attended to the unit and partially effected repairs, but then left it to the tenant to contact him. The landlord's testimony was that the tenant never did call him to advise that she had moved articles out of the way, and the landlord never called the tenant. I find that the landlord has placed the onus on the tenant, contrary to the order of the Dispute Resolution Officer. I further find that the landlord did nothing about the repairs from June 22, 2010 until February 14, 2011, and the work is still not completed. I further find that the landlord is permitted under the *Act* to enter the unit and complete the repairs upon giving the tenant 24 hours notice in writing, or with the consent of the tenant.

I further find that this has been a very lengthy tenancy and the landlord has failed to comply with Section 32 of the *Residential Tenancy Act*:

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 is suitable for occupation by a tenant.

I therefore find that the tenant has proven her claim, and I accept the tenant's application that rent from August 1, 2010 to date should be reduced to the amount that she paid per month when the landlord purchased the property, and in the absence of any evidence to the contrary, I find that amount is \$525.00 per month. The tenant will be entitled to a \$475.00 rent reduction for 7 months of rent in the amount of \$3,325.00. I further find that the tenant is entitled to that rent reduction until the repairs are completed.

With respect to the tenant's evidence that she is entitled to 2.5% interest, I find that the application is without basis and is hereby dismissed without leave to reapply.

With respect to the tenant's evidence that the landlord did not investigate the mould issue, I find that the landlord did look behind the wall once the gyprock had been

removed and did not locate the origin. If the mould issue arises again, the tenant will be at liberty to reapply.

Conclusion

For the reasons set out above, I hereby order that the landlord complete the repairs to the rental unit.

I further order that the tenant pay rent in the amount of \$525.00 from March 1, 2011 until all of the following repairs have been completed: sand and paint the sealed patches of gyprock mud on the living room ceiling, laundry room ceiling, kitchen ceiling, kitchen window sill and 2 areas by the living room window and in the closet, the master bedroom ceiling and the window wall, as well as the 2nd bedroom window wall and top left side of the closet door; repair the unstable wall in the tenant's daughter's bedroom.

I further grant a monetary order in favour of the tenant in the amount of \$3,325.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

With respect to the tenant's application for recovery of the filing fee for the cost of this application, I find that the tenant did not pay a filing fee, and that application is hereby dismissed 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: February 18, 2011.

Residential Tenancy Branch