



Dispute Resolution Services

Residential Tenancy Branch

Office of Housing and Construction Standards

Decision

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

Introduction

This hearing was convened in response to the tenant's application for a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement / an order instructing the landlord to make emergency repairs for health or safety reasons / an order instructing the landlord to make repairs to the unit, site or property / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

At the outset of the hearing the tenant withdrew the 2 aspects of her original application concerning repairs and emergency repairs.

Issues to be decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from November 1, 2010 to October 31, 2011. Monthly rent is \$900.00. A security deposit of \$450.00 and a pet damage deposit of \$200.00 were collected.

An approximate chronological summary of relevant events is as follows:

May 15: - tenant informed landlord of mould found in the unit

May 16: - landlord's "maintenance worker" attends unit to inspect the mould

May 18: - landlord's painter attends unit and describes remedial work proposed

- tenant is not comfortable with the proposal described by the painter to address the mould, and hires a consultant

May 19: - tenant informs the landlord in writing that she is hiring a consultant to assess the mould and requests that the landlord “cancel any arrangements made with your contractors.”

- tenant’s consultant provides inspection results, notes the “customer complaint” as “visible fungal staining in the bedroom closet,” and provides an estimated cost for “remediation” and “disposal”

- landlord’s consultant attends the unit

- report prepared by landlord’s consultant notes, in part, as follows:

The tenant contracted with an environmental consulting company to identify and confirm the presence of mould. The environmental company confirmed the presence and type of mould.

[We were] contracted to conduct an onsite evaluation to evaluate the mould concern, conduct air sampling and prepare a report based on the onsite observations, and lab sampling results.

May 20: - landlord sends restoration and repairs personnel to commence remedial work

May 25: - restoration and repairs completed

May 31: - the landlord’s consultant issued a report which reads in part as follows:

Based on our onsite investigation and an interpretation of the above mentioned lab results from both sampling interventions the total spore counts and individual mould concentrations, in air are considered acceptable. There is no indication of amplification or significant species biodiversity inside the home. Consequently there does not appear to be a health issue related to mould in this home at the present time and the home is safe to occupy.

We would strongly recommend that tenants ensure bathroom fans are used regularly and that closets are well ventilated. This housekeeping practice will go a long way in preventing the occurrence of surficial mould on exterior closet walls where humidity levels are high.

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.

Section 33 of the Act addresses **Emergency repairs**, and provides in part:

33(1) In this section, “**emergency repairs**” means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property,...

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

- (a) the tenant made the repairs before one or more of the conditions in subsections in subsection (3) were met;

While I acknowledge the tenant's concern about the potential health risk of mould in general, based on the documentary evidence and testimony of the parties, I find there is no evidence that the subject mould presented a health hazard, or that it required urgent, emergency repair. Further, even if I were to find that eradication of the mould was an emergency repair requiring urgent attention, I find that the tenant failed to give the landlord "reasonable time to make the repairs." Rather, within a few short days of informing the landlord of the visible presence of mould, the tenant hired a consultant and instructed the landlord to cancel their own arrangements. Had the tenant informed the landlord of her concerns about the proposed work described by the landlord's painter, there is no evidence that the landlord would have declined to hire a consultant to assess the situation before proceeding with any repairs. In short, I find that the tenant acted prematurely in hiring a consultant and, by doing so, did not afford the landlord a reasonable opportunity to respond. In the result, the tenant's application for reimbursement of costs incurred for hiring a consultant is hereby dismissed.

As to the claim concerning restricted use of the unit while remedial work was undertaken in one bedroom, I find that the tenant has established entitlement of \$100.00. This is calculated on the basis of \$20.00 per day over a 5 day period.

As the tenant has achieved partial success with her application, I find that she has established entitlement limited to \$25.00, which is half the filing fee.

Conclusion

I hereby ORDER that the tenant may recover \$125.00, as described above, by way of withholding that amount from the next regular payment of monthly rent.

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*.

DATE: June 14, 2011

Residential Tenancy Branch