



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing was conducted in person and dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for an order seeking landlord's action to conduct emergency repairs. The tenant also applied for a monetary order for the cost of mould testing, medical expenses, costs of various treatments like massage, acupuncture and infra red sauna, return of rent and the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. Both parties handed in late evidence with each other's consent.

Issues to be decided

Is the tenant entitled to her monetary claim for any or all of the above? Did the landlord respond to the tenant's complaints in a timely manner? Was the landlord negligent with regard to repairs and maintenance of the rental unit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on December 01, 1994. The monthly rent is \$760.00 payable on the first of each month. The rental unit is a one bedroom apartment which measures approximately 600 square feet.

The tenant stated that sometime in 2007 there was a leak in the hallway inside the rental unit. The tenant agreed that the landlord acted in a timely manner and had the problem taken care of. The landlord testified that in 2008, due to a problem in the unit above the rental unit, water leaked into the dispute rental unit.

The tenant was away on vacation. The landlord entered the unit and repaired the damage caused by the leak above.

The tenant stated that she believes that these two leaks were not repaired in an efficient manner and mould started growing inside the walls and above the ceiling. The tenant stated that since January 2011, she has been unwell but only found out that her symptoms were linked to mould in August 2011, when her friends suggested that her health problems could be due to the presence of mould in the apartment.

In early August 2011, the building manager attended the rental unit to install new windows and met with the tenant. She did not report any health problems to him. On August 22, 2011, the manager received a complaint about wasps in the balcony of the rental unit and visited the unit to assess the problem. During that visit, the tenant informed the manager that she was unwell and suspected that the cause of her illness could be mould. She advised the manager that she had taken some samples from the drywall in the ceiling and had sent them to the laboratory for testing.

On September 02, 2011, the tenant provided the landlord with a copy of the results of these tests, which was filed into evidence by the landlord. This report shows that the samples were collected on August 25, 2011 and analysed on August 29, 2011. This timeline contradicts the tenant's testimony that she had sent the samples to the laboratory sometime prior to August 22. The result reported the presence of some spores but stated that unusual mould conditions did not exist.

The tenant testified that even though the laboratory test results report that no unusual mould conditions exist, common varieties of mould were detected. The comments in the report state that the *"mold identified in this report is often associated with excess moisture and can be a problem in indoor environments at high levels."* The report also goes on to state that *"Since mold is naturally present in outdoor environments and we share the same air between the indoors and the outdoors, it is impossible to eliminate all mold and their spores from the indoor environment"*.

Despite the negative report, the tenant remained concerned and therefore the manager decided to get a second opinion. On September 06, a technician, hired by the landlord, inspected the apartment and reported that there was no evidence of mould but as a precaution took samples and sent them to the laboratory for analysis. The report of the inspection also indicated that during the inspection no indicators of long term water damage were found inside the unit.

On September 14, the landlord received the results of the laboratory tests done on samples taken on September 06. The report indicated that some mould had been identified in the unit. The manager requested and obtained contact information for a restoration company that did work in mould removal and made arrangements for an inspection and quotation.

On September 16, a technician from the restoration company, inspected the unit and provided the manager with a quote. The tenant pointed out that spraying was not included in the quote. The manager authorized the company to carry out the remedial work. The work started on September 20 and was completed on September 23. The report indicated that the drywall and insulation in the bathroom and hallway were removed and upon inspection the exposed areas were dry. The report goes on to say that even though there was no outward evidence of mould, as a precautionary measure, the area was sprayed.

The tenant stated that she was present along with a friend during the time the contractor was working inside the unit and she did not observe him spraying the area.

On September 22, the manager visited the unit at the tenant's request. The tenant drew the manager's attention to a hole in the wall that she had created by cutting the drywall in a hallway wall that backed onto the bathroom. The tenant informed the manager that she would be contacting the City inspector.

The property use inspector visited the rental unit on September 29 and reported her findings in a letter dated October 18, 2011. She stated that she inspected the area that was exposed by the opening created by the tenant and found no evidence of moisture. The tenant described the inspector as *"did not seemed like she know much about mould"* and stated that the inspector was wrong in her assessment of the problem. The tenant filed a copy of an email from the inspector that states *"Unfortunately, I am not unable to help any further regarding your mold issue. As I stated when I was there, moisture was not detected inside the walls. We would not be able to make the landlord tear down all the walls in your apartment looking for mold"*.

The landlord stated that he followed up on every complaint made by the tenant and was willing to remedy the situation if indeed there was a problem. Despite the negative findings, regarding moisture inside the walls and the test results that indicated that the presence of mould was not present in a quantity that would cause health problems, as an added precaution the manager had an airborne mould sampling test done within the suite, by an environmental company, on October 28, 2011. The results indicated *"mould amplification is not occurring within suite #203. Also, the air sampling results showed the indoor airborne mould spore levels to be low and are not considered to be a health concern to occupants"*

The tenant stated that she feels sick only when she is at home and even developed a tooth infection from breathing in the mould. Her friends also feel sick when they visit her. The tenant filed letters from her friends who confirm feeling sick during visits with the tenant. The tenant also filed a letter from a therapist who specializes in assisting people with emotional trauma and illnesses. The letters describe the tenant as a healthy, energetic and exceptionally clean person who has been sick in the last year with headaches, aches and pains, runny stuffy nose, watery eyes, a cough etc. The letters state that the landlord is negligent with regard to repairs, thereby leaving the tenant exposed to toxic mould.

The tenant also filed photographs, some from 2007 and the more recent ones showing a white powder that appears to be present on a beige surface, dead bees, insulation etc.

The tenant filed copies of her medical records. Notes from the records of a visit to the doctor on August 23, 2011 indicate that the tenant told the doctor that she gets headaches, sinus congestion, fever, coughs, stomach problems, skin itches all over, muscle aches and fatigue only when at home. The tenant also informed the doctor that she feels better out of the home, which is a leaky condo in a 30 year old building and that her friends have similar problems when they visit her.

The doctor findings on this report are “*pharnx normal, no nasa congestion now drums normal congestion nasal*”.The doctor’s assessment stated “*Possible mould allergy*”. On a report dated September 30, 2011, the doctor writes “*Likely sick building syndrome*”.

The tenant is making a monetary claim for 50% reduction in rent retroactive since January 2011, to be reimbursed for the mould testing, medical expenses, \$300.00 for an air purifier that she plans to purchase, , and three days worth of house cleaning. The tenant is also requesting that the landlord be ordered to replace the carpet with easy to clean hard flooring, provide alternative accommodation until the mould problem is resolved, hire a cleaning crew to clean after the mould repair work is done and conduct further tests to check on the air quality inside the rental unit.

The tenant’s claim is as follows:

1.	Return of half month’s rent for January to November 2011	\$4,180.00
3.	Laboratory testing	\$45.00
4.	Postage and photographs	\$31.24
5.	Dental work	\$581.28
6.	Massage, acupuncture, infra red sauna, cleansing medication	\$341.69
	Total	\$5,194.88

Analysis

Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for a problem, if he was aware of a problem and failed to take reasonable steps to correct it.

In this case, the landlord was notified of a problem by the tenant on August 22, 2011. The landlord took immediate action and despite the negative result of the first test, he arranged for a second test to address the tenant's concerns that unusual mould existed inside the rental unit. The landlord took further action and arranged for remedial work when the second test detected low amounts of mould. Reports from the contractor indicate that the areas behind the drywall in the ceiling and the hallway were dry and there were no visible signs of mould, but were sprayed as a precautionary measure. The landlord took additional steps to have the air quality inside the unit tested, which also showed the levels of spores were low and not considered to be a health concern.

Based on the documentary evidence filed by both parties and the verbal testimony of both parties, I find that the landlord acted in a timely manner and repaired the leaks that took place in 2007 and 2008. I also find that the landlord acted responsibly in response to the tenant's complaint of mould. The landlord took extra steps to get a second opinion and have the remedial work done immediately. Despite all indications that the mould if present in the unit was in low amounts and did not pose any health risk, the landlord had the quality of air inside the unit tested.

The tenant may have some health issues but was unable to provide information from her doctor confirming that her health problems were directly linked to the presence of mould in the rental unit. The tenant has also not proven that her dental problems were the result of breathing in mould spores and that the presence of mould resulted in the tenant having to take various medical treatments. Therefore the tenant's claim for dental work and medical treatment is dismissed.

The tenant bought the mould test kit and ordered the laboratory work of her own free will and therefore must bear the cost of these items.

The legislation does not permit me to award any litigation related costs other than the filing fee and therefore the tenant's claim for the cost of postage and photographs is dismissed.

I find that the tenant has not proven negligence on the part of the landlord and has not proven that there is mould present in the unit in quantities that can cause health problems. Therefore her claim for the return of rent and for an ongoing rent reduction is dismissed.

The tenant has not proven her case and must therefore bear the cost of filing her application.

Conclusion

The tenant's application is dismissed in its entirety.

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: November 04, 2011.

Residential Tenancy Branch