Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, ERP, RP, PSF, RR, MNDC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking orders for the Landlord to comply with the Act and tenancy agreement, to make emergency repairs to the rental unit, to make repairs to the rental unit, to provide services or facilities required by law, to allow the Tenant to reduce rent for repairs, for a monetary order for damage or loss under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Tenant entitled to the orders sought against the Landlord?

Is the Tenant entitled to monetary compensation from the Landlord?

Background and Evidence

The Tenant moved into this apartment building in 2000, and moved from one suite into the subject rental unit in 2005. As of August 1, 2011, the monthly rent for the subject rental unit is $925.00.

The Tenant's claims involve mould discovered in the master bedroom in the rental unit.

The Tenant testified that she has been suffering from bronchitis and ill health for about the last two years. She went to an allergist and was tested and according to her

testimony, she is not allergic to anything, including mould. The Tenant testified that the allergist was adamant there was something causing her bronchitis and ill health.

The Tenant testified about water leaks around the windows in the rental unit, and other deficiencies, and that she had mentioned these in writing to the Landlord. The Tenant requested permission from the Landlord to make certain improvements to the rental unit at her own expense in February of 2011, which included installation of a dishwasher. I note that earlier in the tenancy the Tenant had paid for hypo-allergenic, non toxic paint.

The Tenant then wrote to the Landlord to inform them that the improvements she requested for a dishwasher, and other requirements, were no longer necessary and that she felt the bathroom needed the most attention. She reiterated on March 4, 2011, that she was not asking the Landlord to perform these repairs, rather, that she was just asking permission to do pay for these herself.

In March of 2011, the Tenant continued to suspect mould in the rental unit. She engaged a certified home inspector to do air quality samples and perform lab tests. The Tenant received the results and emailed an Agent for the Landlord on March 28, 2011, to inform him that the results. "... in bedroom/bathroom were high mould spores in comparison to the outside sample." [Reproduced as written.]

The mould found was penicillium/aspergillus. At its highest, it was found to measure twice the amount of samples taken from outside the rental unit. It also appeared to be mostly concentrated in the main bedroom of the rental unit.

The Agent for the Landlord requested a copy of the air quality report if the Tenant had one. The Tenant replied, "I do, but right now my Doctor is dealing with it and me. This exercise cost just under 500 dollars so I'm not so willing to pass it around for free." [Reproduced as written.]

The Tenant goes on to explain the results of the report to the Agent for the Landlord in the email. However, the Tenant did not provide the report to the Landlord at the time.

On March 30, 2011, the Agent for the Landlord emailed the Tenant with information on a spray product which eliminates mould. On April 8, the Agent again contacts the Tenant to provide more spray treatments and the Tenant informs the Agent she has already used the product. She states it has not changed the environment in the bedroom and she is not sure what to do. She states she will most likely move when she can find a healthier suite.

On September 3, 2011, the Tenant discovered a damp carpet in the bedroom. She testified there was a mould bloom on a cover on the wall. She had a friend come over with a thermal imaging camera and they discovered mould around the baseboards and some rust on a chair.

It was subsequently determined that a bleed off valve attached to the hot water heating system in the wall was leaking. It was a slow drip, however, the parties agree it was the source for the moisture causing the mould.

The Tenant immediately reported this to the building manager. She requested a dehumidifier and this was provided, although this was several days later. The original report to the building manager was on the Labour Day long weekend.

When the Landlord began doing the remediation work, on or about September 7, 2011, the Tenant became concerned about the mould being spread around the rental unit and was also concerned about asbestos in the wall. The Tenant contacted Worksafe B.C. The Tenant was not satisfied with the first contractors in to do the remediation work. Work in the unit was delayed while waiting for a report on the alleged asbestos and the mould. The Tenant testified that the actual remediation of the unit began on October 24, 2011.

The Tenant initially claimed $10,125.05 in damages against the Landlord, which included a rent reduction retroactive to April 2011, and the replacement of her bed. However, during the course of the hearing the Tenant eliminated and reduced some of these, and now claims as follows:

For the Landlord to replace her Tempurpedic pillows $419.89, to replace a rubber pillow $333.76, for replacement filters for vacuum $100.58, for a safety mask with filter $37.52, for replacement filters for an air purifier $553.23 and the $100.00 filing fee for the Application. The Tenant has also requested an appropriate reduction in rent. Initially she requested this from March in her Application, however, during the hearing she claims for September 2011 onwards.

The Tenant testified that since September she has not had use of the master bedroom in the rental unit. She had to move her furniture from that bedroom into the second bedroom for storage, and she is sleeping in the living room.

In reply, the Landlord provided submissions and two Agents for the Landlord testified.

One Agent cross examined the Tenant and the Tenant admitted she should have followed up with the Landlord after the March air test. The Agent also questioned the Tenant on smoking and the Tenant admitted to smoking now and then, but stated she currently only smokes herbal cigarettes.

When questioned on what compensation her insurance company was providing to her, the Tenant replied she was advised not to put the written response from her insurer into evidence.

In further reply, the Landlord submits that the Tenant has failed to prove the Landlord was negligent.

The Landlord also submits that the Tenant has failed to provide medical evidence to support any medical conditions she may have.

In evidence the Landlord submitted pictures of the mould on the back of a baseboard, and across the lower portion of the wall where the baseboard is normally installed.

An Agent for the Landlord testified that once the wall was opened up, he immediately sprayed the interior with the mould killing product.

The Landlord denies it is responsible to reimburse the Tenant for all her losses, and argued in the alternative that the Landlord would only be liable for the depreciated value of the items claimed for, if found negligent.

The Tenant replied that had the Landlord supplied a de-humidifier in September when the problem was identified she would not have had to replace her pillows or the other filters.

The Landlord submits that the de-humidifier would not have made a significant difference, since the problem was not moisture in the air, but rather the slow, small leak behind the drywall which caused the mould.

The Landlord submitted that the remediation work would have started earlier in September, however, due to the Worksafe B.C. standards certain tests had to be performed.

The Agent for the Landlord testified that the affected area of the rental unit with the mould, had been sealed off with plastic before the work started.

The Landlord estimated that the work in the rental unit would be completed by mid November.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

To prove a loss and have the other party pay for the loss requires the claiming party, here the Tenant, to prove four different elements:

First proof that the damage or loss exists; secondly, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement; thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage; and lastly, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

While I find that the Tenant has established there was mould in the rental unit, I find the Tenant has failed to prove any of her losses occurred because the Landlord was negligent or has breached the Act or tenancy agreement.

The mould was not apparently visible until September of 2011. The Tenant did not provide the Landlord with the report regarding mould in the rental unit in March of 2011, when she had the report. Had she done so, and the Landlord took no steps to investigate, then she might have made out her claim in negligence from March on.

Furthermore, to claim to have this report indicating mould in the rental unit and then refuse to share it with the Landlord, indicates the Tenant failed to take steps to mitigate or minimize the loss or damage being claimed against the Landlord.

I do find that the Landlord should have supplied a de-humidifier sooner, even if it was a long weekend when it was first requested. There are many remediation sources available to the Landlord, and 24 hours a day in cases of an emergency. Nevertheless, I find the Tenant failed to provide sufficient evidence to prove how the lack of a de-humidifier affected the filters or pillows she is claiming for. Therefore, I dismiss the

Tenant's claims for the pillows, for the mask and for the replacement filters for the vacuum and air purifier.

Nevertheless, I find that the Tenant has established that she is entitled to a rent reduction during the remediation work in the rental unit. She has lost use of portions of the rental unit and is entitled to a rent reduction during the work, pursuant to sections 27 and 32 of the Act.

The Tenant had claimed for a reduction of 50% of the rent, while the Landlord responded that 10% reduction would be appropriate.

I find the Tenant has lost more than the use of one bedroom here, as she has had to move the contents of the bedroom under repair into her other bedroom. She has gone from a two bedroom unit to what is effectively a bachelor unit. However, the Tenant has not lost the use of the bathroom or kitchen facilities, which would have had a greater affect on her loss of use.

Taking these factors into account I find that the appropriate reduction in rent should be 33% of the monthly rent, or a reduction of $305.25 per month.

I also find that the loss to the Tenant began in September of 2011, when it became apparent to all that the mould was in the bedroom, and therefore, I award her the sum of **$915.75** for loss of use, for the months of September, October and November of 2011.

As the Tenant has had limited success with her Application, I award only a portion of the filing fee for the Application, in the amount of **$25.00**.

To recover the awarded amount, I order that the Tenant may deduct the sum of **$940.75** from her rent, as calculated below.

The monthly rent shall be reduced by 33% to **$619.75** and will continue on at this rate until either; (a) the Landlord makes an Application for Dispute Resolution, proves the remediation work has been completed in the rental unit and requests the rent be returned to the usual amount; or, (b) the Tenant agrees in writing that the remediation work has been completed and the rent may resume to the usual amount.

Therefore, unless the rent has already been returned to the usual amount in accordance with the above, the December rent is reduced to $619.75 and the Tenant may deduct the $940.75 awarded from the December rent payable and as well as the balance of the award ($321.00) from rent due for the following month.

I also order that once the remediation work is completed that the Landlord shall forthwith, and at its own expense, pay for a professional cleaning of the rental unit and for professional cleaning of any carpets in the rental unit which were not replaced during the remediation.

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 18, 2011.

Residential Tenancy Branch