



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RP FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, to make repairs to the unit site or property, to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a monetary order as a result of that breach, pursuant to section 67 of the *Residential Tenancy Act*?
3. Has the Landlord failed to make repairs to the rental unit once a request has been issued in writing?
4. Has the Landlord failed to provide repairs, services, or facilities previously agreed upon?

Background and Evidence

The parties agreed they entered into a verbal month to month tenancy agreement that began May 1, 2010. Rent is payable on the first of each month in the amount of \$800.00 and prior to May 1, 2010 the Tenant paid \$400.00 as the security deposit. No move in condition inspection report was completed. The rental unit is an older two bedroom rancher style house built on a crawl space and is located on the same five acre property as the Landlord's home.

The Tenant affirmed she is seeking \$5,000.00 in compensation for having to live in a house that she did not know was full of black mold. She first noticed the mold in the laundry and furnace room around the end of summer. After she told the Landlord about

the presence of mold he attended the unit and washed the wall with some sort of bleach mixture however that did not last and the mold has returned.

The Tenant pointed to her photographic evidence which proves there is mould in several areas of the house and around windows. About a few months ago she noticed the presence of mold in other locations and after doing research on the negative affects she asked the Landlord to fix the problem and to lower her rent but he refuses to allow her to lower her rent and has not taken any action to remove the mold.

The Tenant confirmed that all of her requests for repairs have always been verbal until she made her application for dispute resolution on December 6, 2011. She is seeking to have the Landlord ordered to repair the following:

- Mold removal throughout the house – she believes this is toxic black mold based on her friend's inspection; she cannot afford a professional inspection so asks the Landlord to complete it
- Repair of sagging beam in the garage/carport as she has been told this is not to code
- Repair broken front living room window which has been cracked and taped since the beginning of her tenancy
- Clear blocked shower drain
- Repair hole behind toilet in the baseboard which is located in an interior wall

The Tenant states that she has to pay for natural gas and electricity and feels her utilities are higher because of the gaps in the windows and the broken window. She has talked to the Landlord several times and requested these repairs but she did not track the dates of these conversations. She would also like a written tenancy agreement that is signed by the Landlord.

The Landlord affirmed that prior to May 1, 2010 the house was occupied by other tenants. He confirmed there had been mold on the walls in various spots throughout the house so just prior to this Tenant occupying the unit he washed down all the walls and painted all of them except for in the laundry and furnace room.

In response to the Tenant's claims the Landlord advised that he will fix the broken window but is not sure if the crack was there at the start of her tenancy, then stated it could have been. He is willing to sign a written tenancy agreement and argued that he attempted to have her sign one but that she refused. He is of the opinion that the beam in the carport is not an issue but agreed to have it inspected. Also, he was not informed

of the shower drain being blocked or the hole behind the toilet prior to receiving the Tenant's December 1, 2011 letter. The Landlord stated he is willing to work with the Tenant as he wants people to be happy. He does not want confrontation; rather he would prefer everyone to be happy.

Analysis

Section 13 (1) of the Act stipulates that a landlord must prepare **in writing** every tenancy agreement entered into on or after January 1, 2004. (Emphasis added).

As per the aforementioned, I hereby order the Landlord to prepare a written tenancy agreement, both parties to sign it, and provide a copy to the Tenant in accordance with the *Residential Tenancy Regulation*.

Section 32 (1) of the Act provides that 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.

Section 32 (5) of the Act provides that a landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

After careful review of the aforementioned and the documentary evidence provided by the Tenant which included, among other things, photographs of the unit, I find that, in the presence of disputed verbal testimony, that the Landlord had not been properly notified of the required repairs, in writing, prior to the Tenant making her application for dispute resolution. Accordingly I find there to be insufficient evidence to support the Landlord wilfully breached the Act, regulation or tenancy agreement, and therefore there is insufficient evidence to prove the Tenant's entitlement to monetary compensation at this time, and her request for \$5,000.00 and reduced rent is hereby dismissed.

That being said, I do find that the Landlord has now been properly informed, in writing that the rental unit is in need of maintenance and repairs to ensure the rental unit complies with health, safety and housing standards required by law, and makes it suitable for occupation by a tenant. Accordingly I hereby Order the Landlord to do the following:

- Have a licensed professional inspect the rental unit for the presence of toxic black mold and conduct repairs as required; and

- Repair the laundry room wall to ensure that the laundry room is properly sealed from the outside – it appears the wall has been broken away and dirt is falling into the laundry room leaving it accessible to moisture, water, and rodents from the outside of the house; and
- Have a licensed professional inspect the sagging beam in the garage/carport and conduct repairs as required; and
- Repair the broken front living room window; and
- Clear the blocked shower drain

The Tenant had also requested that the hole behind toilet in the baseboard be repaired and confirmed this is an interior wall. As this is an interior wall I find the requested repair to be nothing more than cosmetic and therefore an order to repair is not warranted.

I caution the Landlord that the Tenant would be at liberty to seek financial compensation if he fails to comply with the above repair orders in a reasonable time.

The Tenant has been partially successful with her application; therefore I award recovery of the **\$50.00** filing fee.

I have included with my decision a copy of “A Guide for Landlords and Tenants in British Columbia” and I encourage the parties to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.

Conclusion

The Landlord is HEREBY ORDERED to repair the rental unit, in accordance with the above listed Order, pursuant to section 62 of the *Residential Tenancy Act*.

The Tenant may deduct the one time award of **\$50.00** from her next rent payment.

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: December 23, 2011.

Residential Tenancy Branch