



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, OLC, RP, FF

Introduction

This hearing was scheduled 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 comply with the Act, Regulation or tenancy agreement / an order instructing the landlord to make repairs to the unit, site or property / and recovery of the filing fee.

While originally scheduled to occur on August 1, 2012, in response to the landlord's request, an adjournment was granted and the hearing was rescheduled to commence at 10:30 a.m. September 5, 2012. Both parties participated in the rescheduled hearing and gave affirmed testimony.

Issue(s) to be Decided

Whether the tenant is entitled to the above under the Act, Regulation or tenancy agreement.

Preliminary Matters:

During the hearing the parties agreed as follows:

- 1) that on Thursday, September 6, 2012, the tenant will vacate the unit from 9:00 a.m. to 5:00 p.m., during which time contractors hired by the landlord will enter the unit, assess the status of mould and undertake all remedial work possible during that day;
- 2) that the landlord's agent, "Janko" will meet the tenant at her unit at 6:00 p.m. on Thursday, September 6, 2012 (as above) in order to provide her with an update on the status of the work undertaken in her unit;
- 3) that at 11:00 a.m. on Wednesday, September 12, 2012, the tenant will meet "Ellie" at the front door of Concordia Court, located at the corner of Beresford and McPherson in Burnaby (2 blocks east of the Royal Oak Sky Train

Station), at which time the tenant will be provided with an opportunity to view a 2 bedroom unit, in addition to a 3 bedroom unit.

- 4) that the tenant is encouraged to contact staff at the Housing Registry as soon as possible to inform them that she requires a 3 bedroom unit located near a Sky Train Station.

Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on September 1, 2006. Presently, the tenant's monthly rent is \$472.00, and her son's monthly rent is \$343.00. Therefore, monthly rent totalling \$815.00 is due and payable in advance on the first day of each month. A security deposit of \$450.00 was collected.

The thrust of the tenant's application for compensation concerns her claim that there is mould in the unit, that the mould has negatively impacted her health and her son's health, that the landlord has been negligent in responding to her concerns about the mould, and that as a result she is entitled to compensation in the total amount of \$19,400.00, which she has calculated as follows:

\$14,400.00: (\$200.00 x 12 months x 6 years). The alleged loss of quiet enjoyment / landlord's refusal to provide alternate accommodation / landlord's failure to respond to concerns in a timely manner.

\$5,000.00: compensation for "health issues."

Analysis

In combination with their affirmed testimony, during the hearing both parties spoke to various aspects of the significant amount of detailed documentary evidence which was submitted. While all of the testimony and documentary evidence has been considered, detailed reference to all issues addressed and considered is not made in this decision.

Documentary evidence includes, but is not limited to, correspondence exchanged between the parties; two "To Whom it May Concern" letters written by physicians on behalf of the tenant; landlord's handout on "humidity;" Homeowner's Guide issued by the Canada Mortgage and Housing Corporation which addresses "Fighting Mold;" landlord's Inspection Forms completed in relation to the tenant's unit on March 18, 2008, May 5 & 6, 2009, and January 17 & 18, 2011; numerous copies of landlord's Request for Repairs forms dated from 2006 through to 2012; Health Link BC's printout

titled, "Indoor Air Quality: Mould and Other Biological Contaminants;" an Inspection Report issued by Eco-Impact and Mould Experts; and photographs.

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

Section 7 of the Act speaks to **Liability for not complying with this Act or a tenancy agreement:**

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 28 of the Act speaks to **Protection of the tenant's right to quiet enjoyment:**

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain:**

32(1) A landlord must provide and maintain residential property in a state of decoration and repair that

complies with the health, safety and housing standards required by law, and

(a) 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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) 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.

Section 33 of the Act speaks to **Emergency repairs**, and provides in part as follows:

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, and

(c) made for the purpose of repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit,
- (v) the electrical systems, or
- (vi) in prescribed circumstances, a rental unit or residential property.

Residential Tenancy Policy Guideline # 6 addresses "Right to Quiet Enjoyment," and under the heading **Claim for damages**, provides in part as follows:

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or

the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

The Supreme Court has decided that arbitrators have the ability to hear claims in tort, and that the awarding of monetary damages might be appropriate where the claim arises from the landlord's failure to meet his obligations under the Legislation. Facts that relate to an issue of quiet enjoyment might also be found to support a claim in tort for compensation in damages. An arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

Based on the documentary evidence and testimony of the parties, and in consideration of the particular statutory and guideline provisions above, my findings in this matter are set out below.

At the outset, I note that the landlord does not deny the existence of some mould in the tenant's unit. The landlord also acknowledges that mould has been found in other units managed by the landlord. The landlord claims that mould comes to the landlord's attention either by way of routine inspections or when a tenant reports the existence of mould. In either case, the landlord takes the position that prompt action is undertaken to address the problem. I am persuaded that, in general, mould can be constructively addressed through a combination of actions taken by the landlord and the tenant.

While there is speculation around the impact of mould on the tenant's health ("chance of her developing secondary infections be they bacterial or fungal," "mold in her home is a probable cause [of] her Son's upper respiratory tract symptoms and her conjunctivitis"), I find that there is insufficient conclusive evidence regarding the degree to which mould in the unit may have contributed to the health concerns of the tenant and her son.

In any event, I find that the tenant has clearly suffered disruption and emotional distress arising from a concern around the negative impact the mould may have on hers and her son's health, and the necessary attendance to the unit by the landlord and others hired by the landlord to address the problem. For a range of different reasons, despite good intentions and best efforts the expeditious achievement of a mutually satisfactory remedy to the problem has exceeded the reach of the parties. I consider that the tenant's experience of delay in this process has likely been enhanced by the health concerns which she must deal with on a daily basis, not least of which is her eyesight.

However, despite the above, on balance I am unable to conclude that the landlord has been negligent or untimely in its manner of responding to the tenant's concerns. In the result, I find that it is not necessary to issue orders instructing the landlord to make repairs to the unit, site or property. This aspect of the application is, therefore, hereby dismissed.

Further, I note that addressing the tenant's concern about mould has progressed to the level of an active and cooperative search for alternate accommodation.

In summary, on a balance of probabilities I find that the tenant has established entitlement to a combined claim for damages and recovery of the filing fee limited to \$500.00. Rather than risk interfering with arrangements in place for payment of monthly rent, I decline to authorize the tenant to recover the above amount by way of withholding funds from the regular payment of monthly rent. In the alternative, I grant the tenant a monetary order in the total amount of \$500.00.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant in the amount of \$500.00. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court, and enforced as an order of that Court.

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: September 17, 2012.

Residential Tenancy Branch