



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement and to recover the filing fee from the landlords for the cost of the application.

Both landlords and the tenant attended the conference call hearing, and the tenant called a witness. The parties and the witness all gave affirmed testimony, and the parties provided evidentiary material in advance of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

This month-to-month tenancy began on January 1, 2012 and ended on August 31, 2012. Rent in the amount of \$900.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$450.00 as well as a pet damage deposit in the amount of \$100.00, all of which has been returned to the tenant.

The tenant testified that on July 2, 2012 the tenant noticed a leak on the floor of the bedroom and then noticed mould on the floor and walls. The apartment manager was informed right away, and was told that the tenant would be vacating the rental unit until the repairs were made. The apartment manager told the tenant that he would inform

the owners. The tenant left on July 2, 2012, and had a trip to the Philippines planned, but the tenant's mother kept in touch with the landlord. The tenant had arranged for a friend to stay in the rental unit to look after the tenant's cat, but had to make other arrangements because of the state of the rental unit.

On August 6, 2012 the tenant found another leak, and the landlords looked at it and asked the tenant to keep an eye on it. More mould was found in the rental unit on August 14, 2012 and the landlord was verbally informed and the tenant followed up with a letter to the landlords the next day. The tenant asked the landlords for a rebate of rent on July 30, 2012, but the landlords only agreed to \$145.00 and paid the tenant that amount, but the tenant has not yet cashed the cheque; the tenant had pro-rated the amount of reimbursement at \$696.00.

The tenant further testified that the mattress on the bed was damp and all furniture had to be removed from the bedroom. The tenant had to wash all clothing, finding mould on jackets, slippers, shoes and items under the bed stored in plastic containers. Photographs were also provided to illustrate the tenant's testimony.

The tenant claims \$1,044.00, being \$696.00 for the month of July, 2012 and \$493.00 for the month of August, 2012 at \$29.00 per day, less the \$145.00 paid to the tenant by the landlords.

The tenant's witness testified to being the tenant's mother, and that the tenant had called complaining about dampness in the rental unit, and had complained for a few weeks. The witness helped the tenant pull the bed away from the wall and found mould growing on the hardwood floor, baseboard and 2 walls. All furniture was pulled away from the walls and the tenant put the cat in the living room and called the landlords. The tenant's witness was concerned that it was very damp in the bedroom. The tenant had an antique dresser and was not able to pull the drawers open due to the wood expanding from the dampness. The witness also testified that she and her children have allergies, and told the tenant that the tenant could not stay in that rental unit. Arrangements were quickly made for a friend to take the tenant's cat and to cancel the arrangements for the person who had planned to stay in the rental unit to take care of the cat.

On July 4 or 5, 2012 the tenant went to the Philippines and stayed at the tenant's parent's home until then. The witness kept in touch with the landlord by phone 3 or 4 times and the witness went to the rental unit to see the progress made on repairs. Part of the drywall was cut away and the baseboards had been taken off, and fans were placed in the rental unit. It took about 2 weeks to find the source. Then the drywall was replaced, painted and the visible mould was cleaned. The tenant returned from the trip

on July 22, 2012 and the repairs were not yet completed, and the tenant stayed with the witness and the tenant's cat stayed with friends. Repairs were completed by July 26, 2012 and the tenant returned to the rental unit.

On August 6, 2012 the tenant called the witness stating that more water was found on the floor. The tenant contacted the witness directly, and advised that no mould was visible at that time. However, on August 14, 2012 the tenant called the witness again stating that there was mould in the closet. The witness attended the rental unit and witnessed mould on the tenant's coats, boots, shoes, purses and items on the dresser. The cat, the mattress, a small dresser and all bedding were removed into the living room, leaving only the antique dresser and bed frame in the bedroom because there was no room in the living room for those items. The tenant moved back in with the witness on August 14, 2012.

The witness went to the rental unit every couple of days, and the closet was emptied. They did 7 loads of laundry at a laundromat.

On August 31, 2012 the tenant was moved to a new apartment, and the following day the witness cleaned the rental unit, an inspection was completed, the keys were returned to the landlords and the landlords paid back the security deposit and pet damage deposit.

The witness further testified that from July 6 or 7, 2012 until recently, the entire front and side of the building has been torn up due to water ingress from the neighbour's yard.

The landlords provided 2 documents entitled, "Statement of Events" and "Position Statement" and read those documents verbatim as affirmed testimony. Photographs of the rental unit, inside and out, as well as floor plans, were referred to in the documents and provided prior to the hearing.

The tenant had called the apartment manager on July 2, 2012 about mould growing in the bedroom of the rental unit, and the tenant left for the Philippines a couple of days later with the understanding that work would be completed during the tenant's absence. On July 6, 2012, a plumber found standing water, waterlogged and damaged wood and walls, and gave some possible sources but none could be confirmed. On July 9, 2012 the plumber returned to investigate more, and on July 11, 2012 moisture-detecting probes were used from which the landlords witnessed water trickling in from the outside through the foundation concrete wall. A trench was dug next the tenant's bedroom and water was noted, and the next day the landlords bought a pump to attempt to keep the

trench dry while they looked for the source. A city waterworks engineer was called, and eventually the landlords uncovered the entire water main service line which destroyed a portion of the garden, walkways and brickwork. On July 13, 2012 the leak was traced to the neighbour's water main that had burst. The neighbours were informed the next day and the leak was repaired on July 15, 2012.

Since the water main was exposed, the landlords decided to replace the water main, and on July 19, 2012 it was insulated where it enters the building behind the tenant's bedroom wall to minimize condensation. The floors, walls and baseboards were sterilized, and repaired, and improvements were made by adding an access door to the concrete floor to allow monitoring of the concrete. The landlords cleaned the rental unit on July 25, 2012, and required time to air out due to fresh paint, and the tenant re-occupied the rental unit on July 27, 2012.

On July 27, 2012 the landlords received an email from the tenant explaining that the tenant intended to withhold some of the rent for August, 2012, and the landlord sent a reply on July 30, 2012 informing the tenant that the landlords would write a separate cheque for a rebate. The same day, the landlords attended to another suite in the building that had also been damaged by the water leak.

Another email was received by the tenant on August 6, 2012 stating that water had appeared again on the floor in the corner of the bedroom, which was confirmed the next day by the landlords. The landlords asked the tenant to monitor it for a few days to see if it continued, and it did so the landlords dug another trench on another side of the building. The tenant was given a letter on August 15, 2012 offering the tenant compensation for 5 days of inconvenience in July along with a cheque. Digging and dismantling the concrete walkway continued from August 15 to August 22, 2012 and no further water ingress was found. The rental unit was inspected on August 22, 2012 and the floor was dry, and the landlords believed that the source of water reported by the tenant on August 6, 2012 had resolved itself, but there was a small area of mould in the corner of the bedroom. The landlords sterilized the corner, and on August 23, 2012 the landlords gave the tenant another letter summarizing the work being completed and questioned the tenant's claim that the rental unit was not liveable. The tenant moved out of the rental unit at the end of August, and on September 1, 2012 the landlords inspected finding that the corner that had been sterilized had remained free of water and mould.

The landlords' position is that the tenant had planned the trip prior to discovering mould and water, and was out of the country from a couple of days after July 2 until July 22. The repairs continued until July 26, 2012 and the landlords reimbursed the tenant for 5 days of rent. The first the landlords knew of the tenant's claim to not be able to stay in

the rental unit was in the tenant's letter dated August 15, 2012. Further, the tenant had given the landlords notice at the end of July, 2012 to vacate the rental unit at the end of August to go to school; the tenant did not move out because of the condition of the rental unit.

The landlord further testified that the tenant never explained any adverse health issues, and the tenant's mother had told the landlords that the tenant's trip was perfectly timed so there was no inconvenience to the tenant. Also, The Canada Mortgage and Housing Corporation website states that anything less than 10 square feet is considered a small area of mould and suggests that a tenant can clean mould as part of a regular cleaning routine with a solution of detergent and water. The landlords estimated that less than 1 square foot was affected. The tenant did not consult a professional to determine whether or not the mould was hazardous.

The landlord further testified that the landlord told the tenant that the cat should be moved due to sawing, etc. and does not agree that the rental unit was unliveable. The items in the plastic container under the bed were likely affected by mould from the first incident, as there was no leak located after the tenant's complaint in August, 2012.

Analysis

In order to be successful in a claim for damages, the onus is on the claiming party to satisfy the 4-part test for damages:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate, or reduce such damage or loss.

In the circumstances, I find that there is no question that a water leak caused mould in the rental unit. Further, the *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant.

I accept the testimony of the tenant's witness and mother, that she and her children have allergies, but I have no evidence before me to support the tenant's claim that the rental unit was uninhabitable due to allergies or any other issues caused by the mould for longer than the 5 days the landlords have already reimbursed the tenant for.

Not all moulds are toxic, and a solution of detergent and water or 1 part bleach and 10 parts water will remove mould. If the mould persists, and the landlords fail to rectify the source of water ingress, the tenant would be entitled to further reimbursement. Also, if items have been destroyed or damaged as a result of water leaks, the landlords would be ordered to reimburse the tenant for such damages. However, the tenant's witness testified that 7 loads of laundry were washed at a laundromat due to the mould, but there is no evidence of lost or damaged items, or the value of any lost or damaged items.

The landlords take the position that since the tenant had already planned a trip out of the country and left shortly after discovering the presence of water ingress and mould, the tenant was not inconvenienced except for 5 days upon the tenant's return. The tenant does not dispute that testimony but testified that other arrangements had to be made for the tenant's cat rather than having a cat-sitter at the rental unit. There is no evidence before me to suggest that the tenant was out-of-pocket as a result of the change in plans for the cat.

I accept that the rental unit was in a state at the beginning of July that made the tenant uncomfortable or fearful of possible health issues, but I find that the tenant has failed to establish that the landlords failed to comply with the *Act* or the tenancy agreement or that the rental unit was not suitable for accommodation beyond the dates that the landlords have already reimbursed the tenant for. The landlords have shown due diligence in investigating and correcting the situation, at no doubt some considerable cost, which is the landlords' responsibility. The *Act* is designed to ensure that landlords provide suitable accommodation in exchange for rents paid by tenants. If a rental unit does not conform to housing standards provided by law, the tenant would be entitled to recovery of rent paid for that period. The landlords dispute that the rental unit was uninhabitable in August as evidenced by the inspection on September 1, 2012 wherein no mould or water was located in the rental unit. Where a party claims against another for damages and the damages are disputed, the onus is on the claiming party to prove the claim, and I find that the tenant has failed to prove that any water or mould remained or reoccurred in the rental unit in August, 2012.

With respect to the tenant's claim for reimbursement of rent for the time that the tenant was out of the country, I agree with the landlords that the tenant was not inconvenienced or out-of-pocket any expenses for that time. In the circumstances, I find that the tenant has failed to establish element 1 in the test for damages; that any damage or loss occurred.

The landlords have provided the tenant with a cheque in the amount of \$145.00, and I find that the tenant is entitled to that money. The tenant is at liberty to cash that cheque, and the balance of the tenant's application is hereby dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

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 23, 2012.

Residential Tenancy Branch