



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss - Section 67;
2. An Order for the Landlord to make emergency and other repairs – Section 32;
and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to an order for repairs?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on September 1, 2003. Rent of \$1,028.00 is currently payable on the first day of each month.

The Tenant states that at the beginning of the tenancy, the carpet was 30 years old and stained and that while the Tenants asked for the carpet to be replaced, the Landlord failed to do so. The Tenant states that in 2009 the carpet in the unit became damp and that on December 8, 2010, the carpet in the unit was wet showing white mold and that underneath the carpet there was black and green mold and fungus. The Tenant

provided letters from two witnesses in relation to the state of the carpet and its ill affect on the health of the witnesses. The Tenant states that this was reported to the Landlord but that the Landlord failed to remedy the matter until December 23, 2010 when the carpets were replaced and an outer wall repaired.

The Tenant states that when the new carpet was installed, the floors under the carpet were not properly cleaned and only a small vacuum was used. The Tenant states that lots of dust was present for the next 3 to 4 months. The Tenant states while living in the unit, the Tenant and family developed heath problems. The Tenant states that the Landlord was contacted a couple of times after the carpet was replaced about the problems. The Tenant provided letters from physicians in relation to the Tenant's health. One of these letters, dated January 12, 2011, notes that the Tenant has been experiencing chronic cough and headache for the past couple of years and that based on the unit photos of mold under the carpet, this health problem was likely caused by the chronic exposure to mild allergens. This same physician notes in a letter dated May 5, 2012 that the Tenant has been diagnosed with asthma again due to mold growing under the carpet. This letter notes that the Tenant would benefit from changing his living conditions as soon as possible.

The Tenant states that due to the family budget such a move is not possible as nearby and comparable housing would cost approximately \$400.00 more per month. The Tenant states that an application was made to BC Housing sometime between 2010 and 2011 and that the Tenant remains on a waiting list for a unit to become available.

The Tenant states that as a result of the floor not being properly cleaned, he lost sleep due to the health effects and that this affected his job. The Tenant states that his family members also experienced health problems, such as a rash and that the Tenant is concerned about future and additional problems with their health.

The Landlord states that the carpet was investigated as soon as the Tenant reported the problem with the carpet, that within 7 days the outer wall gap was repaired and that

the Landlord acted quickly to replace the carpet before the end of December 2010. The Landlord states that an inspection was conducted by the health authority on December 21, 2010 who indicated that no signs of mold were present. One of the Agents states that knowledge of the Tenant's illness was not known about until the Tenant's application was served on the Landlord. A second Agent states that they did receive a copy of the physician's letter and that in May 2012, the unit was inspected and no mold was found to be present and no odors were detected. The Landlord does not know whether the floor under the carpet was inspected at the time but states that when the carpet was replaced in 2010 that the floor underneath was scraped and cleaned. The Landlord states this cleaning is known from the Tenant's photos which show the scraping. The Landlord states that the Tenant was offered a mutual end of tenancy agreement and that the Landlord has followed through on everything in a timely manner. The Landlord argues that the Tenant has failed to show that the Landlord breached any section of the Act.

The Tenant states that the Landlord, in particular, the managers of the unit, have bullied the Tenant and others. The Tenant states that when the Tenant went to the office to complain about the dust in the unit, the manager told the Tenant to leave and pushed the Tenant. The Landlord states that it was the Tenant who was confrontational, that it was the Landlord who called the police and that at no time did the manager shove the Tenant. The Landlord points to a letter provided as evidence from the Landlord dated December 29, 2010 in relation to this incident.

The Tenant states that while many other tenants have complained, the Landlord has threatened the Tenant for soliciting other tenant signatures on a petition thereby stopping the Tenant from gathering evidence in relation to the behavior of the managers. Further, the Tenant states that although there was other evidence in this respect, the costs for translation were prohibitive and not all the evidence could be provided. A letter dated February 25, 2011 from the Landlord to the Tenant warns the Tenant about this activity and requests that the Tenant stop.

The Landlord states that although the details can no longer be recalled, that this letter would not have been sent without having received complaints from the other tenants, that the building has a “no solicitation” policy and that this letter reflects the Landlord’s policy. The Landlord states that the Tenant has failed to support its claim of bullying and bad behavior by the Landlord, that no other tenants have complained about the managers or made claims against the Landlord in relation to the behavior of the managers. The Tenant states that a majority of the other tenants are immigrants who are not aware of their rights and are susceptible to the managers bullying ways.

The Tenant seeks compensation of \$25,000.00 and an order that the Landlord make repairs to the floor under the carpet.

Analysis

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that costs for the damage or loss have been incurred or established and that steps were taken by the claiming party to minimize or mitigate the costs claimed. Given the evidence of the Landlord that the carpet was investigated as soon as reported by the Tenant and replaced in December 2010, I find that the Landlord acted sufficiently to initially remedy the problem with the carpet.

Given the evidence from the Tenant and the Tenant’s physician that the Tenant has experienced health problems due to the presence of mold, I find that the Tenant has shown on a balance of probabilities that the Tenant is experiencing health problems due to the presence of mold in the unit. Considering the Landlord’s evidence that following the receipt of the medical letter in May 2012 indicating the Tenant’s problems with mold the Landlord did not inspect under the carpet in the unit, I find that the Landlord did not act sufficiently to ensure that mold was not present underneath the carpet. Given the significance of the health problems as supported by the medical letters, but noting that the Tenant has not shown any financial losses, I find that the Tenant is entitled to

nominal compensation of \$100.00 per month for the period May 2012 to January 2013 inclusive for a total amount of **\$900.00**. I order the Landlord to inspect the area under the carpet within one week of receipt of this decision and should mold be present, I order the Landlord to repair the area and, if necessary, to replace the rug within two weeks of the inspection. Should the Landlord fail to act, I give the Tenant leave to apply for additional compensation.

Although the Tenant states that the Landlord has bullied the Tenant and others, as the Tenant has not provided evidence from other tenants I find that the Tenant's evidence of bullying is weak in the face of the Landlord's evidence. I therefore dismiss the Tenant's claim for compensation arising from the Landlord's actions towards the Tenant.

As the Tenant has been only partially successful with its application, I decline to award recovery of the filing fee.

Conclusion

I grant the Landlord an order under Section 67 of the Act for the balance due of **\$900.00**. If necessary, this order may be 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 Act.

Dated: January 29, 2013
