



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding New Century Real Estate
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for an order that the landlords make repairs to the unit or site; for an order permitting the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlords for the cost of the application.

The tenant and the named landlord attended the hearing, and the landlord also acted as agent for the landlord company. The parties both gave affirmed testimony and provided evidentiary material to each other and to the Residential Tenancy Branch. The hearing did not conclude on its first day, and the landlord's evidence package had not been received by me. The package was received by me prior to the second day of the hearing. The tenant also called a witness who gave affirmed testimony, however the witnesses that the landlord intended to call were not available. The parties were given the opportunity to cross examine each other and the tenant's witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

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

At the commencement of the first day of the hearing, the parties agreed that the notice to end tenancy is cancelled.

Issue(s) to be Decided

The issues remaining to be decided are:

- 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, and more specifically for general and specific damages incurred as a result of water and mold damage in the rental unit?
- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant established that the landlords should be ordered to make repairs to the unit, site or property?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this fixed term tenancy began on December 15, 2012 and expires on June 30, 2014. The tenant still resides in the rental unit. Rent in the amount of \$1,500.00 per month is 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 \$742.50 as well as a pet damage deposit in the amount of \$200.00, all of which remains in trust with the landlords. A copy of the 6-page tenancy agreement with 1-page Addendum has been provided.

The tenant further testified that a different manager of the rental unit had told the tenant prior to the commencement of the tenancy that the average cost for hydro would be \$50.00 or \$60.00 per month, and that water and gas were included in the rent. Hydro bills arrive every 2 months, and in February, 2014 the tenant received the first hydro bill for December 15 to 31 and all of January, 2014 in the amount of \$245.00. The tenant talked to the hydro company, and a manager for the building opened the utility room for they hydro employee and the meter was read. The hydro company made an estimate, and the bill reduced for one bill.

The tenant testified that the condensation on the windows was so severe water was running off inside the rental unit like it was raining. The accumulation collected. The tenant told the building manager of her concerns, and for 16 days out of 21, the tenant wasn't even at the rental unit. The hydro bill for February to April at \$245.00 was extremely high. The landlords' agents discovered that the dehumidifier was broken, and the tenant's cleaning lady found a pool of water on the carpet in the bedroom and mold

covering the entire window and window sill. The tenant pulled away the night stand and found it full of mold, as well as the walls and bed posts. The tenant had to throw away the night stand, but was able to sand down the bed posts so they can still be used. The landlords have compensated the tenant for loss of furniture by reducing rent by one half for one month.

The tenant states it was not a dehumidifier issue. The landlords had the dehumidifier fixed but that didn't fix the problem, and the mechanical guy told the tenant to turn on the gas oven to get dry heat in the rental unit.

The tenant called her brother, who is contractor who does full construction inside and out of residential buildings.

The tenant further testified that the landlord is not looking after the work and leaving it up to the tenant to deal with contractors, and no one for the landlords is physically attending. The manager was fired after getting a quote of \$7,000.00 to fix the water, mold and carpet damage. The strata made a decision that they weren't covering the damage, and the landlords' insurance wouldn't pay either. The tenant believed the quote was too high as well and told the owner to get another quote or call the tenant's brother; the owner told the tenant over and over how broke she was. The owner went for the higher quote and hired a new manager.

On May 25, 2013 the new manager arrived and appointments were made for the manager to attend again with contractors but twice they didn't show up. The owner asked the tenant to see that the work got done and fired the manager. From April 22 to September 9, 2013 they had different workers each day and one day the tenant arrived home to find a worker in her bedroom and his dad watching TV in the living room. The landlord only attended once in June because the strata needed an inspection, but the landlord did not supervise the work; she left it to the tenant to advise if the landlord should release the funds to the workers.

Within 3 days of signing another 6 month lease, the whole water and mold issue completely came back. The dehumidifier ran for 4 hours per day from April, 2013 to February 2014. The tenant has had to sleep in the living room and the hydro bills went up again. The strata did a test and determined that the waster was not coming from leaking windows. The landlord's engineer put holes in the drywall to do the scope of work and water test, and the holes were there from February 15 or sooner, and were finally filled and repaired last Wednesday. They painted over the mold and laid carpet on wet floors. The worker said they were only there to fix the holes.

The tenant testified that the landlords provided a portable dehumidifier and the tenant has drained it 12 times since March 8. The tenant stated that \$1,500.00 per month is a lot of rent to pay. The tenant claims \$1,170.00 in compensation, being \$500.00 per month for loss of the bedroom for January and February, 2014, reimbursement of \$150.00 of the hydro bill because of the incorrect hydro costs quoted by the first manager, and \$20.00 for recovery of hydro for the month of March, 2014 for having to run the dehumidifiers. The tenant also claims plus \$1.00 per day for running the dehumidifiers to the end of the fixed term. The tenant also asks that the landlord be ordered to be on-site managing the repairs. The carpet is still wet and needs cleaning, and the tenant asks for an order that the landlord be ordered to complete the repairs and have the carpet cleaned.

The tenant's witness testified that the tenant lived in the living room for 5 months because the bedroom and the tenant's bedroom furniture were full of mold. The tenant had arranged for work to be done to the rental unit, and the witness helped move the furniture into the living room. The witness also wrote a letter on March 4, 2014, a copy of which has been provided. The witness testified that someone wrote March 3, 2014 on the top, but it was not the witness. The letter confirms that the tenant looked after all contractor work and states that the tenant adjusted her work schedule to accommodate it.

The landlords' testimony was heard on the second day of the hearing, and the landlord was again represented by the property manager, hereinafter referred to as the landlord's agent. In November, 2013 the landlord's agent became the property manager. The tenant's lease was to expire in mid-January, 2014 and the tenant advised that she wanted a month-to-month. The landlord's agent advised that the owner insisted on a lease for one year and \$15.00 per month more. The tenant stated that she might want to buy a house within 6 months, and the landlord and tenant agreed on a 6 month lease. The tenant wasn't happy about the increase at first but agreed to it, and an adjustment was made on the new lease to change the date rent was payable to the 1st of the month.

The landlord's agent further testified that the tenant was very happy about the rental unit and was interested when the landlord's agent advised that the owner was thinking about selling.

The tenant called the landlord's agent panicked about mold in the rental unit. The landlord's agent called the owner, then the resident manager and the strata manager. The resident manager called back and told the landlord's agent that it was

condensation. The landlord's agent called the insurance company and the strata manager who said the same problem occurred last year and called a restoration company who cleaned and left fans in the rental unit. The landlord's agent spoke to the tenant twice and all was okay, then the tenant called and said it was wet again. The tenant didn't do anything about it. January 17 was the first time the tenant advised the landlord's agent, then again around the beginning of February, and the strata manager agreed to get an engineering report done. On February 27, 2014 however, the landlord's agent brought in another contractor who said there was a problem with the insulation. He could see through the opening in the wall made by the previous engineer. The landlord's agent was not in the rental unit nor did she see the living conditions of the tenant from January 17 to February 27, but testified that the resident manager and the strata manager were asked to take care of it. The landlord's agent got a portable dehumidifier and gave it to the tenant on March 1 or 2, 2014. Then the tenant said it was broken and it was replaced on March 3 or 8, 2014. The engineering report was received on March 14, 2014 which concluded that the moisture was condensation. A copy of the report has been provided.

The landlord's agent states that the landlord could not do much more until the engineer's report was received. Also, the tenant had the blinds closed in March, 2013 and that's when the furniture got moldy. The tenant allowed the moisture to build up. The tenant was advised to put towels on the window ledge but the tenant didn't believe it would work. The tenant has not mitigated any loss, and therefore is not entitled to a monetary order.

Analysis

Firstly, with respect to the tenant's application for a monetary order, the parties agree that the water and mold build-up occurred in early 2013 and was resolved in September, 2013. The build-up returned in January, 2014 and for a second time the tenant has lost the use of the bedroom. The landlord's agent claims that the tenant did nothing to mitigate the circumstances. The tenant notified the landlord in January, 2014 and the engineer's report wasn't received until March, 2014. I agree that the report shows that the issue is condensation, and there are some specific recommendations for the tenant, but the tenant had nothing to go on prior to the report other than a recommendation to keep the dehumidifier on. In the circumstances, I find that the tenancy was devalued by the loss of the bedroom. The tenant applies for recovery of \$500.00 rent for the months of January and February, 2014. A person generally uses a bedroom for 8 hours per day for sleeping in, and I find that the tenant is entitled to recovery of one third of the rent paid for the months of January and February, 2014, or \$1,000.00.

The tenant has also applied for an order that the landlords comply with the *Act*, regulation or tenancy agreement and testified that specifically, the landlords should be ordered to be on-site managing the repairs as per the *Act*. Clearly that is the landlord's responsibility under the *Act* and I order the landlord to manage repairs to the rental unit, including, but not limited to drying and cleaning the bedroom carpet, and that sufficient notice be provided to the tenant as per the *Residential Tenancy Act*.

The tenant has also applied for an order that the landlord make repairs to the unit, site or property. The parties have a fixed term tenancy that doesn't expire until the end of June, 2014. The report of the engineer recommends that the tenant take measures to minimize the occurrences of mildew growth. I have reviewed the engineer's report and I am not satisfied that the tenant has established that any other repairs can be completed to satisfy the issue of humidity within the rental unit, however the tenant has testified that the carpet is still wet and is in need of cleaning. I agree that that is the responsibility of the landlord, and I order the landlord to dry the carpet and have the bedroom carpet professionally steam cleaned by April 15, 2014. If the landlord fails to do so, the tenant will be at liberty to hire the cleaner and deduct its cost from a future months' rent upon providing the landlord a receipt for the completion.

The tenant has also asked for an order reducing rent for repairs, services or facilities agreed upon but not provided, and submitted that \$1.00 per day for running the dehumidifier from January to the end of June, 2014 is justified. The tenant has provided one hydro bill, but has not provided any to compare or any evidence to substantiate the amount. I find that the tenant has failed to establish that the landlord should reduce rent for hydro or for running the dehumidifier, and I dismiss that portion of the tenant's application.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 fee for the cost of filing.

Conclusion

For the reasons set out above, the notice to end tenancy is hereby cancelled, by consent, and the tenancy continues.

I hereby order that the tenant be permitted to reduce a future months' rent by \$1,050.00 as full compensation for inconvenience and loss of enjoyment of the entire rental unit, and recovery of the filing fee for the cost of this application.

I order the landlords to manage repairs to the rental unit, including, but not limited to drying and cleaning the bedroom carpet, and that sufficient notice be provided to the tenant as per the *Residential Tenancy Act*.

I order the landlords to dry the carpet and have the bedroom carpet professionally steam cleaned by April 15, 2014. If the landlords fail to do so, the tenant will be at liberty to hire the cleaner and deduct its cost from a future months' rent upon providing to the landlords a receipt for the completion.

The tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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: April 03, 2014

Residential Tenancy Branch

