



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNDC, OLC, RP, ERP, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for compensation for devalued tenancy due to mould and vermin, an order to force the landlord to comply with the Act, an order to force the landlord to do repairs and reimbursement for the cost of the application.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

Is the tenant entitled to compensation for devalued tenancy and other damages due to mould or bedbugs?

Should the landlord be ordered to comply with the Act by completing repairs?

Preliminary Matter

The applicant tenant submitted late evidence that was received on file and served on the landlord the day before the hearing.

Rule 3.5 of the Residential Tenancy Proceedings Rules of Procedure requires that, to the extent possible, the Applicant must file copies of all available documents, or other evidence at the same time as they file the application. If that is not possible the evidence must be served, at least five (5) days before the dispute resolution proceeding.

Rule 4.1 of the Residential Tenancy Proceedings Rules of Procedure states that if the Respondent intends to dispute an application, the evidence upon which the Respondent intends to rely must be received as soon as possible and at least 5 days before the dispute resolution hearing or if that is not possible, the evidence must be filed with the Residential Tenancy Branch and received by the Respondent at least 2 days prior to the hearing. (my emphasis)

The “Definitions” portion of the Rules of Procedure states that when the number of days is qualified by the term “at least” then the first and last days must be excluded. Evidence served on a business, must be served on the previous business day. In addition, weekends or holidays are excluded in the calculation of days for evidence being served on the Residential Tenancy Branch.

I find that the applicant tenant’s evidence cannot be considered as it was received too late. I find that by serving their evidence a day before the hearing, the tenant did not allow the respondent landlord sufficient time to submit their evidence refuting or defending against the content of the tenant’s evidence package.

Accordingly, the tenant’s late evidence will not be taken into consideration in the determination of this dispute. However verbal testimony by the participants pertaining to the content of the late evidence was accepted and considered and the other party was permitted to respond verbally to the testimony given.

Background and Evidence

The tenancy began on September 1, 2012 and rent is \$650.00 per month.

The tenant testified that, shortly after they moved into the unit, patches of mould appeared and some of their furnishings became contaminated with mould. The tenant testified that they reported the mould situation to the landlord but the only action taken by the landlord was to paint over the mould on the walls. The tenant testified that the walls are still damp in the unit. The tenant is seeking an order to force the landlord to eradicate the mould and also seeks \$2,500.00 in monetary compensation.

The landlord disputed the tenant’s testimony and argued that the mould is caused by moisture generated by the tenants. The landlord pointed out that the tenants have a practice of hanging their wet laundry indoors. The landlord testified that they acted immediately after the mould was reported to eliminate the mould by painting over the mouldy areas.

The landlord testified that they even offered to repaint the entire rooms affected, but the tenants declined the offer. The landlord acknowledged that they never hired a qualified mould expert, but stated that the landlord is familiar with the causes and sources of

mould because of his academic background. The landlord is of the opinion that the tenant is solely responsible for any mould appearing in the unit.

The issue of bedbugs was discussed and the tenant acknowledged that the problem has been resolved. Therefore, I find that the portion of the dispute dealing with claims related to vermin does not need be determined.

Analysis

An Applicant's right to claim damages from another party is covered by section 7 of the Act which states that if a landlord or tenant fails to comply with the Act, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the tenant to prove that the landlord is not complying with the Act.

With respect to the landlord's obligations under the Act, I find that section 32 of the Act states that, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit.

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, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant.

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. While 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 tenant is not required to make repairs for reasonable wear and tear.

I find that, under the Act, a tenant has a basic right to expect safe, hygienic accommodation that does not pose a health risk from mould or other contaminants and hazards.

I find that, to meet their obligation under the Act, the landlord would be expected to respond promptly to any reports of a potential health problem, such as mould, without undue delay and keep the tenant apprised of the progress or plans.

While I find that the presence of mould does not necessarily constitute a violation of section 32 of the Act by the landlord, nor by the tenant, the question to be considered in this application is whether or not the landlord's response to the mould complaint and subsequent intervention, was sufficient to comply with their obligation under section 32 of the Act.

In this instance, I find that the landlord did take action by repainting portions of the unit contaminated by mould. However, I find that this course of action was not adequate, given the seriousness of the situation where there was visible evidence of mould growth in more than one location in the unit.

I find that the landlord should have immediately initiated an investigation of the matter through a qualified mould specialist to accurately confirm the source and causes of the mould growth and what courses of action should be taken depending on what was determined during the investigation.

I find there was not sufficient evidentiary support for the landlord to make an immediate conclusion that the tenant caused the mould, nor that repainting the walls would eliminate potential dangers to the tenant's health from the mould.

I find that, when it comes to allegations of health risks from mould by an occupant, prompt intervention by a qualified mould expert is a reasonable expectation to confirm that the rental unit is safe for habitation.

For this reason, I hereby order the landlord to have the rental unit inspected by a certified mould contractor to determine the following:

- Whether or not mould contamination is still present;

- If so, what health risks it poses;
- What the source of the mould is or was;
- What measures are recommended to eliminate existing mould contamination, if any, and to prevent future mould contamination.

I further order that the landlord request a written report from the mould specialist and that a copy of this report also be provided to the tenant by the landlord.

Finally, I order that the landlord follow recommendations and advice provided by the mould expert and take what actions are deemed necessary to address the problem.

In regard to the tenant's monetary claim, I find that this is premature. Therefore I hereby dismiss the portion of the tenant's application seeking compensation with leave to reapply.

I order that the tenant is entitled to be reimbursed the \$50.00 cost of the application and this amount may be withheld from the next rental payment owed to the landlord,

Conclusion

The tenant is partially successful in the application and is granted an order to compel the landlord to engage a mould specialist to investigate and issue a written report, a copy of which must be provided to the tenant. The tenant's monetary claim is dismissed with 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: May 28, 2014

Residential Tenancy Branch

