



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC RR FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed on April 29, 2014, by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for reduced rent for repairs, services, or facilities agreed upon but not provided, and to recover the cost of the filing fee from the Landlord for this application.

The Tenant was represented by his Agent, hereinafter referred to as Agent; and the Landlord was represented by his Property Manager, herein after referred to as the Landlord.

The parties appeared and gave affirmed testimony. Each party was provided an opportunity to ask questions about the process, as explained in the recorded message at the outset of this proceeding. Each party declined to ask questions and acknowledged that they understood how the conference would proceed.

The Landlord confirmed receipt of the Tenant's 19 page evidence submission served with the application, which included: the Tenant's written submission; copies of letters the Tenant wrote to the Landlord; and information from the internet regarding mold. The Landlord testified that he did not receive copies of the colored photographs that were received by the *Residential Tenancy Branch* on May 16, 2014.

Section 3.1 of the *Residential Tenancy Branch Rules of Procedure* stipulates that evidence which the applicant wishes to rely upon must be served to the *Residential Tenancy Branch* and the other party, prior to the hearing. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore, as the Landlord had not received copies of the Tenant's 7 photographs I find that that photographic evidence cannot be considered in my decision. I did however consider the documentary evidence that had

been received by the Landlord and the oral testimony provided by both the Agent and the Landlord.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Tenant proven entitlement to aggravated damages?
2. Has the Tenant proven entitlement to monetary compensation in the form of reduced rent for repairs agreed upon but not provided?

Background and Evidence

The Landlord submitted that the Tenant entered into a written month to month tenancy agreement that began on January 1, 1999. Rent is payable on the first of each month in the amount of \$636.07 and on December 15, 1998 the Tenant paid \$235.00 as the security deposit.

The Agent testified that the Tenant is currently overseas so she was asked to present his submission on his behalf. She indicated that in addition to his written submission the Tenant told her that he has suffered from aggravation by having his repair requests ignored. He told her that he tried to speak with the Landlord about his concerns regarding the presence of mold in his bathroom and how it is affecting his health.

The Agent stated that the Tenant was told by a previous maintenance person that the mold problem is behind the wall and simply cleaning or replacing the caulking will not resolve the issue. The Tenant had told her that he first reported the mold issue to the Landlord in December when he reported the broken stove and his requests to repair the mold behind the wall have gone unanswered.

The Agent noted that she has not seen the Tenant's washroom or the mold herself. The Tenant has told her that the bathroom fan was not working and was recently replaced. She indicated that the Tenant has continued to reside in the rental unit and had full use the bathroom. She pointed to the internet information provided in the Tenant's evidence and stated that the Tenant told her that he is experiencing the negative health symptoms which are listed on the internet and connected to the exposure of mold.

The Landlord testified that he has been property manager of this unit since December 2013. The unit is one of 67 units that are a mixture of rental units and strata owned units. The building was constructed in approximately 1990 and is a well maintained building.

The Landlord submitted that in December when he first took over this unit he did an inspection with the owner and at that time the Tenant informed him that the stove was broken. He made arrangements for the Tenant to have a new stove; however there was a miscommunication and a used stove was delivered. Once he found out there were still problems with the stove he had a new one delivered.

The Landlord indicated that he had seen a small amount of mold in the corners of the tub when he did his December inspection but the Tenant did not request repairs at that time. The first time he heard from the Tenant about the mold concern was in January 2014, when he received a hand written note from the Tenant.

The Landlord said he did not consider the Tenant's complaint as a major concern so he neglected to tell his maintenance person about the repair request until April 16th. His maintenance person called the Tenant on April 17th and left a message. When he did not hear back from the Tenant, the maintenance person called again on April 25th and arranged to conduct the repairs on April 29, 2014. The maintenance person wiped the mold down with a chemical and noticed that a small amount remained so he replaced all the caulking. The Landlord stated that the Tenant told the maintenance person he was very pleased with the work. The Landlord noted that based on the maintenance person's report there was only a "slight sign of mold" around the tub.

The Landlord stated that when the maintenance person inspected the bathroom they suspected the bathroom fan was not working, so on May 20, 2014, it was replaced.

In closing, the Agent submitted that the way she understood this situation was that the Tenant first told the Landlord about the mold in December, during the walk through, but that he told them there was "no rush" to fix the problem. Then when his request in February 2014 was not attended too he wrote notes to the Landlord in March and April before anything was done. The Agent stated that the Tenant told her the previous maintenance person told him that the real problem is behind the wall and that this issue has been a threat to his health, which the Landlord is continuing to ignore.

Analysis

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The term “mold like” is used in my analysis below, as there was no evidence submitted from either party that would indicate the substance had tested positive for mold.

Neither party disputes that there was a mold like residue that was present around the bathtub. There was no dispute that the Landlord had the mold like substance removed and had the caulking replaced. That being said, the Tenant asserted that there is a larger problem that lies behind the walls in his bathroom which the Landlord is ignoring.

The Tenant has sought \$10,636.07 comprised of \$636.07 for “the aggravation of being totally ignored” which is related to the Tenant’s claim for reduced rent, plus \$10,000.00 for “*the deliberate neglect with subsequent risks to my health*” and for “*the tort, the blatant contempt for the Residential Tenancy Act*”.

As described in the *Residential Tenancy Policy Guideline # 16*, aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Losses of property, money and services are considered "pecuniary" losses. Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of self-confidence, loss of amenities, mental distress, etc. are considered "non-pecuniary" losses.) Aggravated damages are designed to compensate the person wronged, for aggravation to the injury caused by the wrongdoer's willful or reckless indifferent behaviour. They are measured by the wronged person's suffering.

An arbitrator does not have the authority to award punitive damages, to punish the respondent.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The documentary evidence supports that the Tenant put his request for various repairs in writing to the Landlord on April 16, 2014 and April 26, 2014; however, the nature of this dispute pertained primarily to the Tenant’s assertion that he is of the opinion that there is mold around his bathtub and behind the walls in his bathroom and that mold has caused ill effects upon his health.

In the absence of medical documentation, I find that there is insufficient evidence to prove the Tenant's health has been negatively affected by the presence of a mold like substance or mildew substance that was around his bath tub.

Although the Landlord may have delayed in enacting the repairs, the evidence supports that by the Tenant's Agent's submission, the Tenant first told the Landlord that there was "no rush" in attending to the bathroom problem. Also, the Tenant continued to reside in the rental unit, with full use of the bathroom; during the period between December 2013 when he allegedly reported the issue and May 14, 2014, when he filed his application for Dispute Resolution.

Based on the foregoing, I find there is insufficient evidence to prove the Tenant's claims under the headings of aggravated damages, tort, and/or neglect, and those claims are dismissed, without leave to reapply.

Notwithstanding the aforementioned, section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the rental unit would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

In this case, there is no evidence that would suggest that the Tenant has suffered a loss of use of any portion of his bathroom or that the mold like substance is coming from behind the tiles. That being said, I accept that the Tenant requested attendance to his maintenance concern for almost 3 ½ months before putting his concerns in a letter and then filing for Dispute Resolution, before the Landlord took action.

Residential Tenancy Policy Guideline #16 states that an Arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an

infraction of a legal right. In this case, I find that the Tenant is entitled to nominal damages and I award him **\$50.00**.

From the evidence, I accept that there had been a communication breakdown between the Landlord and Tenant in the past. Therefore, I would suggest that the Tenant continue to put his repair or maintenance requests in writing, so that the Landlord can determine what action is warranted, in a timely fashion. I caution the Tenant that the Landlord has the discretion to determine if an item is repaired or replaced, providing that the item remains fully functional, in accordance with section 32 of the Act.

The Tenant has only partially succeeded with their application; therefore, I award partial recovery of the \$100.00 filing fee in the amount of **\$50.00**.

Conclusion

The Tenant has been awarded Monetary Compensation in the amount of **\$100.00** (\$50.00 + \$50.00). The Tenant may deduct this one time award of \$100.00 from his next rent payment as full satisfaction of this award.

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: July 14, 2014

Residential Tenancy Branch

