



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDC, RP

Introduction and Preliminary Matters

This dispute resolution process originated upon the tenants' application for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act"). The tenants applied for an order requiring the landlord to make repairs to the rental unit and for a monetary order for money owed or compensation for damage or loss.

The tenants' application was successful, as the original Arbitrator in a Decision of March 17, 2014, ordered the landlord, in her absence, to:

- *Have a professional mould inspector inspect the cabin for mould and comply with any recommendations made by the mould inspector with respect to remediation. I also order the Landlord to provide the Tenants with a copy of the mould inspector's report.*
- *Hire a professional contractor to inspect the cabin and to repair or replace damaged or destroyed plumbing; weeping tiles; roofing materials; plumbing; insulation; drywall; ceiling, flooring and outside decking.*
- *Provide the Tenants with a copy of the professional(s)' report including recommended repairs. (reproduced as written)*

The original Arbitrator ordered the landlord to have complied with the order by July 15, 2014.

The original Arbitrator also awarded the tenants monetary compensation of \$506.25, by way of a retroactive rent reduction, and granted the tenants a continuing 25% reduction in rent until the repairs by the landlord were completed.

On April 7, 2014, the landlord filed an application for review consideration of the Decision of March 17, 2014, alleging that she was unable to attend the original hearing because of circumstances that could not be anticipated and were beyond her control, that she had new and relevant evidence that was not available at the time of the original

hearing and that she had evidence that the director's decision or order was obtained by fraud.

The landlord's application for review consideration resulted in a favourable decision as the reviewing Arbitrator, in a Review Consideration Decision dated April 24, 2014, ordered a new hearing on the tenants' original application.

At the review hearing, started on June 18, 2014, the tenants, their legal advocate, the landlord and her witness attended. The hearing began and a discussion ensued regarding the service of each other's documentary evidence. Both parties had submitted a substantial amount of disorganized evidence, at least to the Residential Tenancy Branch ("RTB") for the hearing; however, during the 69 minute discussion, each party denied receiving all the evidence of the other party. In particular, the landlord denied receiving the tenants' evidence and reaffirmed not receiving the tenants' original application, Notice of Hearing, or evidence.

At this time, I adjourned the hearing and because the landlord had obtained a new hearing partially because she established that tenants had not sent her all their documents for the first hearing and due to the landlord's denial she had received the tenants' documentary evidence for this hearing, I ordered both parties to serve or re-serve their documentary evidence to the other party, in one package, which was to be indexed and numbered. In particular, I directed that the tenants were to provide specific proof that they had served the landlord their evidence.

At the reconvened hearing, the tenants and their advocate confirmed receiving the landlord's evidence, which was served to their advocate as the tenants refused service of the documents, according to the landlord. As the tenants' advocate confirmed receiving the evidence, I allowed the landlord's documentary evidence.

In response to my question, the tenants stated that they had not served their evidence to the landlord after the hearing on June 18, 2014, as they believed the original service of evidence was adequate for their purposes.

I therefore have excluded the tenants' documentary and photographic evidence from consideration, due to their deliberate refusal to comply with my order made during the June 18, 2014, hearing, which was made as the landlord had denied receiving the tenants' evidence and due to the question about whether or not the tenants had served their original application, evidence, and notice of their first hearing. This hearing proceeded on the tenants' testimony and the landlord's oral, documentary, and

photographic evidence; however, the tenants were not restricted from any testimony regarding their documentary evidence.

During the hearing on June 18, 2014, and the final, reconvened hearing, all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and admissible documentary and photographic evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Should the Decision of March 17, 2014, be confirmed, varied, or set aside?

If the Decision of March 17, 2014 is not confirmed, are the tenants entitled to an order requiring the landlord to make repairs to the rental unit and for monetary compensation?

Background and Evidence

The undisputed evidence shows that this tenancy began on March 22, 2010 and that monthly rent is \$675.

The rental unit is one side of a side-by-side duplex, described as a one bedroom cabin and located near a river, and there is another side-by-side cabin duplex located adjacent to the duplex in question.

The landlord's relevant documentary evidence included, but was not limited to, photographs of the rental unit and adjoining rental units, the written tenancy agreement, a receipt for a refrigerator replacement for the rental unit, a plumbing receipt, letters from current and existing tenants attesting to the landlord's attributes as a landlord and the condition of their rental units, a written report from a renovation company regarding the condition of the rental unit, a mould investigation report based upon the landlord's requisition, dated April 4, 2014, a report from a restoration company, dated August 1, 2014, a report and curriculum vitae from the landlord's witness, noting that he has been originally a carpenter, then a building inspector for 26 years, and a supervisor of inspectors for the last 10 years, and written communication from the tenants, which the landlord alleged to be disrespectful, insulting and inappropriate.

Tenants' submissions in support of their application-

The tenants submitted that the rental unit required mould remediation, which was the nature of their request for repairs.

The tenants' monetary claim was \$675; however, the tenants did not provide particulars or a breakdown of their claim.

The tenants' advocate submitted that the tenants' best evidence to prove their application was the mould investigation report, commissioned and submitted by the landlord.

The advocate submitted that the report shows in most instances that the matter of mould in the rental unit was due to the structure of the rental unit, and that the landlord should be required to follow the recommendations of the report. In particular, the advocate submitted all interior mould be remediated, that the humidity be set at normal levels, that all windows need to be replaced, the walls and ceiling with mould should be replaced, that any plumbing issues need to be addressed as per the report, particularly in the bathroom, and that the roof should be adequately repaired to prevent further mould.

In response to my question, the tenant submitted that the landlord "was at fault because she drinks too much". The tenant submitted further that there were no rain gutters and the exterior was dry rotting. In further response to a question, the tenants were unable to provide a date when they made requests for repairs to the landlord.

Landlord's responsive evidence-

The landlord did not deny that the rental unit contained mould, but submitted that the biggest source in the mould growing in the rental unit was due to the tenants' negligence and deliberate acts. The landlord denied receiving notices from the tenants regarding the spread of mould and that the tenants have been cautioned many times over the course of the tenancy to allow proper ventilation in the rental unit.

The landlord referred to the renovation company's report, which stated that when the owner entered the rental unit to investigate, he was "immediately overcome" with extreme humidity and "very unsanitary conditions". The owner went on to write that the ceiling in the master bedroom had a slight moisture damage and mould growth, which

was caused by a moisture buildup on the inside, not from the metal roofing failing to keep the building envelope dry and habitable.

The recommendation of the owner of the renovation company was to replace the bathroom window before winter.

The report was not dated, but the owner wrote that he was contacted by the landlord on March 31, 2014, to meet her and the tenants at the rental unit.

The landlord also referred to the report from the restoration company, dated August 1, 2014, which stated that the project manager for the company, who authored the report, took note of the extreme humidity inside the rental unit, and provided the inside and outside temperature and humidity levels.

The project manager informed the landlord that mould needs three things to start colonization, those being a constant moisture source, excess humidity, and a food source. The project manager after inspection of the kitchen cupboard suggested that the tenants were putting away dishes while still wet and observed that some of the dishes in the cupboards were heavily soiled.

The project manager also noted that as to the puddle on both sides of the shower curtain, causing damage and deterioration, a bigger curtain will solve the problem. The project manager also noted that the likely cause of the microbial activity building behind the backside of the toilet was condensation. The project manager stated that the bathroom fan was still capable of "pulling decent cubic feet/min" and recommended that the tenants leave the bathroom fan on for at least an hour after showering, as that was the cause of a lot of the bathroom condensation.

The project manager attributed microbial activity on the bedroom wall due to the lack of ventilation by the tenants in not leaving a window open and excess humidity, which builds up away from sun and UV rays.

The project manager noted that the walls were clammy to the touch and surmised that the ventilation and roofing were adequate for the size of structure, as the adjoining rental unit sharing the same ventilation system and roofing showed no signs of microbial activity.

The landlord stated that she intended on replacing the windows, but that the tenants have made the replacement difficult, as they refused entry by her contractor to measure, and they have questioned her contractors.

Landlord's witness-

The landlord's witness stated that he was last in the rental unit in September 2013, as the tenants have made it impossible to go back in, to replace the blinds, at which time he said it felt like a "tropical jungle," reeking of humidity. The witness stated that the tenants had allowed huge amounts of dirt and cobwebs to accumulate, which contaminated the blinds so much, they had to be replaced.

The witness questioned the mould assessment report, and submitted that the report only mentioned what was occurring and the current state of the rental unit, not the cause. The witness asserted that the exterior walls were recently painted with a 20 year paint, and that the tenants' housekeeping and habits are causing the mould. These included leaving windows and blinds closed, allowing heat and moisture to build up. When there is no air movement and dark, as moisture and humidity have to escape somewhere, mould results, the witness explained.

The witness submitted further that the adjoining rental unit and the other two identical rental units close by were all occupied and dry and free from mould.

The witness submitted the rental unit was in good shape at the beginning of the tenancy, as he assisted the landlord in readying the home at that time, and that after 4 years of uncontrolled interior humidity, with the tenants' ignoring the landlord's request to follow proper ventilation procedure, the mould developed and grew.

The witness stated that tenants were entirely to blame for the damage and would cause the landlord great expense to restore the rental unit.

Analysis

Under section 32(1) of the Act, a landlord must provide and maintain a residential property in a state of decoration and repair that complies with health, safety and housing standards required by law given the age, location and character of the rental unit.

Under section 32(2) of the Act, a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant.

In reviewing and weighing the evidence of the parties, I find that three credible experts have attributed the presence and growth of mould in the rental unit due to the tenants' habits, housekeeping, and negligence. In reading the reports from the renovation company and the restoration company and hearing and reading the evidence from the landlord's witness, I find that the tenants' are the likely cause of the development and growth of the mould due to their failure to provide proper ventilation or proper cleaning of the rental unit.

In reaching this conclusion, I was further heavily influenced by the reports and photographic evidence that the adjoining and adjacent three rental units, of equal size and building composition, were dry and free from mould.

I have also considered the mould assessment report ordered by the landlord; however, after reading the report, I was left with the impression that the building related (i.e., structural) issues noted by the assessor were as the result of prolonged disregard by the tenants of their responsibility or obligations to maintain reasonable health, cleanliness, and sanitary standards. For instance, the assessor was consistent with the other three written reports in noting the warmth and humidity levels, poor housekeeping, and dirt and debris about the rental unit.

I do not find that the report shows on a balance of probabilities that the rental unit had structural issues at the beginning of the tenancy.

The tenants had the burden of proving that the cause of the mould was a result of a breach of the Act by the landlord and I find that the tenants have submitted insufficient evidence to prove their allegations.

I therefore dismiss their request for an order requiring the landlord to make repairs to the rental unit.

On a separate matter, as to the replacement of windows in the rental unit, as noted in two of the reports, the landlord stated that she has arranged for the windows to be replaced. I therefore do not find it is necessary to make an order for the landlord for a window replacement; the tenants, however, are directed to cooperate with the landlord and her contractor regarding the installation of the windows.

As I have found that the tenants have submitted insufficient evidence to prove a breach of the Act by the landlord, I dismiss their claim for monetary compensation of \$675, without leave to reapply.

Conclusion

Due to the above, the tenants' application is dismissed, without leave to reapply.

As I have dismissed the tenants' application requesting an order requiring the landlord to make repairs to the rental unit and monetary compensation, I set aside the Decision of March 17, 2014, of the original Arbitrator granting the tenants' application for orders for the landlord, monetary compensation and a rent reduction. The Decision of March 17, 2014, in favour of the tenants is now of no force or effect.

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: August 25, 2014

Residential Tenancy Branch

