



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AWY HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MNDC, FF

Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent and for a monetary award claiming the rental unit was unfit for habitation.

By the time of the first hearing the tenant had relocated and so the validity of the ten day Notice was no longer an issue.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is entitled to the relief requested?

Background and Evidence

The rental unit is a bachelor suite. The tenancy in this suite began on November 1, 2013 though the tenant had been residing elsewhere in the same building with the same landlord for about fifteen years. The monthly rent was \$550.00. The matter of the \$275.00 security deposit has been settled between the parties.

The tenant testifies that because his bathroom had no vent or fan, the odour prevented him from reasonably living and cooking in the remainder of the suite. Further, he says that refuse and rat carcasses dropped in a narrow passageway between his building and the adjoining building wafted up into his suite creating an offensive odour. He says that though the landlord finally installed a fan in the bathroom in May 2014, it runs on a timer and does not run long enough to adequately vent the odour. The bathroom has a window but the tenant says it is ineffective because it opens to a common hallway and so, in the tenant's view, would just vent the offensive odour there.

The tenant testifies that his suite has been infested with spiders and silverfish to such and extent that he could not sleep or sit in the suite without suffering bites. He says he told the landlord's representatives about the bugs when they came to install the fan but nothing was done. He says he's been forced to sleep elsewhere because of the bugs.

The tenant says there was a serious mould problem in his suite and that as a result he suffered breathing problems which led to heart problems and weight loss. He says the mould took hold because the building has been leaking for years and the landlord failed to fix it.

He produced a report dated February 13, 2013 from a professional mold investigation company that had investigated another suite in the same building; suite #4. That report discovered noticeable poor air quality in the suite, potential visible mould within a water damaged ceiling area and visible mould on a piece of drywall from the bedroom. Air samples were taken and they showed penicillium/aspergillus mould in high concentrations. The report noted that many people were allergic to the mould and that effects of toxic moulds on people vary. The report recommended removal of all mould affected building materials, cleaning of mould affected structural members like wood studs, laundering of all bedding and clothing, vacuuming and cleaning of all horizontal surfaces with a detergent solution.

The tenant produced photos of a storage room, not part of the suite, which appeared to show considerable dark mouldy surfaces. He produced photos of his suite. The photos were meant to show the holes and cracks that the bugs are using to enter the suite. No visible mould was shown.

The landlord's representatives, the sons of Mr. J.W. the long time landlord, and who took over management of the building about two years ago, both testified.

They said that upon the tenant's request for a fan they attended to install one in May 2014. Mr. A.W. testified that he spent four days in the suite installing the fan and that he discerned no bug activity though he worked in shorts and a t-shirt. He did not see any rodents or evidence of rodents. He did not discern any bad odour. He says he even examined the tenant physically for the alleged bites but found no evidence. As a result the landlord took no action regarding the bugs.

He looked in again on June 14th and saw no bugs but for the odd spider.

Days before the tenant vacated and after this application was brought, Mr. A.W. placed six bug traps at various locations in the suite. He took photos of their placement. After

about three weeks he checked the traps and took photos. They show very little bug activity, with only one large and three or four small silverfish being caught.

The landlord's representatives submitted the signed statements of other four tenants in the building stating they "have had no complaints with any pests within the building or within my unit...."

As the result of the tenant's mould allegation, the landlord retained its own expert who assessed the mould in this unit 1B on September 30, 2014. It found that mould concentrations in unit 1B were lower than the outside samples. It found that mould growth was not observed in the suite and that the mould concentrations in the suite were "considered normal." It also examined a storage room that was the subject of testimony, but the storage unit's condition does not relate to the conditions in unit 1B.

The landlord submitted photos of the exterior of the building to show the windows in the suite. The landlord's representatives say that any odour that tenant might discern comes from neighbouring food outlets in the string of commercial buildings beside the commercial building housing this suite. They say they have not put anything below the tenant's windows that would cause odour and that the occupant of the suite with a window immediately beside the tenant's south window has not complained about any odour.

Analysis

Both sides to this dispute have presented good cases and all gave credible testimony.

In regard to the alleged bug infestation, having considered all the evidence, it has not been established on balance of probabilities that the tenant suffered such an infestation. I place particular reliance on the failure of the landlord's bug traps to show any meaningful catch. I dismiss this part of the tenant's claim.

In regard to the allegation of offensive fumes and odour, I first want to note that such an allegation is a very subjective one. With the tenant saying there was offensive odour and with the landlord's representatives attending and failing to discern it and without further corroboration, I find the tenant has not established his claim. I dismiss this item of the claim.

I accept the tenant's mould expert report. It shows there was a significant mould problem in unit 4 in February 2013. I accept the landlord's mould expert report. It shows there was not a mould problem in unit 1B at the end of September 2014. I

consider that had there been a mould problem in 1B to a level of severity to cause the tenant discomfort, it would still have been evident at the end of September. I conclude that the tenant has failed to establish the alleged mould problem and I dismiss this part of the claim.

Conclusion

The tenant's application is dismissed.

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: October 23, 2014

Residential Tenancy Branch

