



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, ERP, RR, FF

Introduction

This matter dealt with an application by the Tenants, for emergency repairs for health and safety reasons, to allow the Tenants to reduce the rent while the repairs are being done, to recover the filing fee for this proceeding and for the Landlord to comply with the Act, regulations or tenancy agreement.

The Tenants said they served the Landlords with the Application and Notices of Hearing (the “hearing package”) by registered mail on December 2, 2014. Based on the evidence of the Tenants, I find that the Landlords were served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded in the Landlords absence.

Issues(s) to be Decided

1. Is there a health and /or safety issue that requires emergency repairs?
2. Is the Tenant entitled to compensation while the repairs are completed and if so how much?
3. Is the Tenant entitled to a rent reduction?
4. Has the Landlord complied with the Act?

Background and Evidence

This tenancy started approximately 17 years ago as a month to month tenancy. Rent is \$777.75 per month payable in advance of the 1st day of each month. The Tenants paid a security deposit of \$365.00 at the start of the tenancy. No move in condition inspection report was completed and signed when the tenancy started.

The Tenant said there was a previous hearing with respect to this tenancy and a decision and orders were issued on August 28, 2014. That decision said the Landlords were to have the mold issues and the concrete cover to the old septic tank inspected and the Landlords were to remediate any deficiencies found. The Tenants said the Landlords did not attend that hearing and although they understood the decision and

order the Landlords have not had the attic mold issue nor the concrete septic tank cover inspected or repaired. The Tenant continued to say that he has had a Restoration Company inspect the attic and the representative said there is moisture issues and a mold in the attic. The Tenant said these issues could be long standing as there have been roof repairs for leaks in the past.

The Tenant continued to say both these items have been brought to the Landlords attention as early as May, 2013 for the concrete septic tank cover and May, 2014 for the mold in the attic. The Tenant said the Landlord phoned him about getting an inspection but nothing has happened to date. The Tenants said they have concerns about these items for both health and safety reasons. The Tenants said the mold in the attic is affecting their health and have included two Doctor letters indicating the mold issue is detrimental to the Tenants health and the mold issue should be addressed for health and safety reasons. As well the male Tenant said the concrete cover on the septic tank has cracked and if someone walked on it the cover could break and the person would fall into an 8 foot tank with concrete falling with them. The Tenant said this is a really safety issue. In addition the Tenant said the concrete cover has shifted and there is a hole at one side big enough for a cat to go in. The Tenant requested that the Landlord obey the previous decision and get these items inspected and repaired. The Tenants submitted 5 photographs that show cracks in the concrete tank cover, moisture in the attic and what looks like mold in the attic.

The Tenant said that the inspections and repairs have not been completed and now they are applying for a rent reduction until the repairs are completed. The Tenants said they did not put an amount because they have had a good relationship with the Landlord for over 17 years and they don't know what amount of compensation would get the Landlords' attention and be fair to them. The Tenants requested the Arbitrator to make that decision.

The Tenant said in closing that the Landlords have not completed the inspections and the repairs as they were ordered to, which has resulted in the value of their tenancy being reduced and their health and safety is affected. Consequently the Tenants are requesting emergency repairs, a rent reduction while repairs are being completed and for the Landlords to comply with the Act, regulations or tenancy agreement.

Analysis

I have reviewed the evidence submitted for the hearing and the Tenants' testimony given at the hearing. As well I have reviewed the previous decision issued on August 28, 2014. It is apparent that the Landlords have made little effort to investigate or correct the issues in the rental unit.

From the evidence I find the Landlords have not complied with the previous decision and Orders as the inspections and repairs have not been completed. Consequently I find the Landlord has not complied with the Act, regulations and tenancy agreement.

Liability for not complying with this Act, regulations or a tenancy agreement

Section 7 of the Act says (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that result.

Further: **Section 32** of the Act says a Landlord must provide and maintain residential property in a state of decoration and repair that makes it suitable for occupation by a tenant.

In addition **Section 33 (b)** of the Act says – Emergency repairs means - (b) necessary for the health or safety of anyone or for the preservation or use of residential property.

I accept the Tenants' testimony and evidence that the concrete septic tank cover is damaged and may present a significant safety risk to the Tenants and other people that are in the rental unit's yard. I find the Tenants have established grounds for compensation from the Landlords.

I accept the Tenants testimony and evidence including the two Doctor notes that the Tenants may have a health risk from the potential mold in the attic. As the Landlords

have not inspected this issue in over 7 months when requested to by the Tenants; I find the Tenants have established grounds for compensation from the Landlords.

Due to the Landlords non-compliance with the previous decision, orders and the Act; I find for the Tenants and I order the following:

1. I order the Landlord to comply with the Decision and Orders of August 28, 2014. Including the inspection and remediation of the potential attic mold issue and the concrete septic tank cover.
2. I order the Tenants to reduce rent while the inspection and remediation of the attic and concrete septic tank cover are being completed by \$500.00 per month. I agree with the Tenants that these are serious health and safety issues and therefore I believe a substantial incentive is needed to deal with these issues as soon as possible. The Tenants are ordered to start the rent reduction for the January, 2015 rent payment. Due to the Christmas season if this decision and orders are delayed in the mail until after the Tenants pay the January, 2015 rent then the January, 2015 rent reduction will be carried forward to future rent payments.
3. Further I Order both parties to sign an agreement when the inspection and remediation of the issues are completed to both parties satisfaction. When this agreement is signed the rent reduction is removed and the rent will return to the agreed amount of \$777.75.
4. If the parties cannot agree to the inspection and remediation of the issues either party is at leave to apply to the Residential Tenancy Branch for clarification.
5. As well if the Landlord has not inspected and remediated these issues by April 1, 2014 the Tenant is at leave to reapply to increase the rent reduction and for compensation for damage or loss under the Act, regulations or tenancy agreement.

As the Tenants have been successful in this matter I Order the Tenant to recover the \$50.00 filing fee from the Landlord. The Tenants are ordered to reduce the January 2015 rent by an additional \$50.00, to recover the filing fee for this proceeding from the Landlords.

Conclusion

I Order a reduction of rent of \$500.00/ month starting January 1, 2015 until the attic mold issue and the concrete septic tank covers are inspected and remediated to both the Tenants and Landlords satisfaction.

I Order the Tenants to reduce the January 1, 2015 rent by an additional \$50.00 to recover the filing fee for this proceeding.

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: December 22, 2014

Residential Tenancy Branch

