



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: O, RP, RR, FF

Introduction

This hearing was convened in response to an application filed by the tenant under the *Residential Tenancy Act* (the Act) seeking:

- Make repairs to the unit, site, or property.
- Allow a tenant to reduce rent for repairs, services, or facilities agreed upon but not provided
- Recover the filing fee from the landlord for this application.

Both parties attended the hearing. Both parties provided late document evidence to the hearing, although both parties confirmed receiving the evidence of the other. I accepted the evidence of both parties as if received within the time prescribed by the Rules of Procedure. Both parties were given opportunity to present all *relevant* evidence and provide *relevant* testimony in respect to the claims and opportunity to make relevant prior submissions to the hearing and fully participate in the conference call hearing. The parties were also provided opportunity to discuss and mutually resolve their dispute, to no avail. Prior to concluding the hearing both parties acknowledged they had presented all of the *relevant* evidence that they wished to present.

Issue(s) to be Decided

Should the landlord be ordered to make repairs? Should the tenant be allowed to reduce rent for repairs, services, or facilities agreed upon but not provided?

Background and Evidence

The parties provided an abundance of evidence. However the *relevant* evidence in this

matter is as follows. Neither party provided a copy of the tenancy agreement. Regardless, the parties agreed the tenancy is subject to a written agreement, which began April 01, 2014 as a fixed term to March 31, 2015, with provision for the tenancy to continue as a month to month tenancy, thereafter. The rental unit is approximately 1380 square feet, and rent in the amount of \$1650.00 is payable on the first of each month. The rental unit is owned by the landlord and is on Strata corporation / managed property (the Strata / Strata unit).

The parties do not dispute that on January 19, 2015 the tenant notified the landlord by telephone and e-mail of a reappearing mold ingress problem inside the master bedroom closet and growing away from the bay window. The tenant responded to this problem by removing all items from the approximately 16 x 14 square foot room and not using it in concern to their family's health.

The landlord provided e-mail communication into evidence that they communicated with the Strata to address the mold problem, whom the landlord determined is responsible to remedy the matter as the problem is deemed to originate with the building's structure. However, to the date of this hearing the mold problem persists and no one has addressed it, and the tenant does not have use of the room. The tenant provided into evidence a series of 5 photographs depicting the mold ingress and a series of e-mail communication with the landlord indicating efforts to address the problem.

The landlord provided evidence that they instructed the tenant to have the mold tested by a professional, and instructed that, if indeed determined and written by the professional that the mold problem is a health hazard, the tenant should have it fixed and subtract the total cost of inspection "which must be reasonable and make sense", from April 2015 rent. The tenants requested the landlord to deal with the problem and with the Strata as they are not the owners.

The tenant provided that, in light of growing ambiguity respecting a plan for any remedy by the landlord, they alerted the landlord to address their understanding of the Strata's requirements in order to deal with the mold problem, but that this has not occurred. The

landlord did not present evidence as to any progress between them and the Strata with a view to a remedy of the mold problem. On February 23, 2015 the tenant received a 2 Month Notice to End Tenancy for Landlord's Use with a stated effective date of April 30, 2015; however, the Notice did not stipulate the *reason* for wanting to end the tenancy as required by Section 49 of the Act, although the landlord included a separate page stating, in relevant part, "Major Construction . . . in order to deal with the black substance, its nature and fixing the related issues with need a vacant possession of the property". The parties were advised that despite any apparent non-conformity of the 2 Month Notice in accordance with Section 52 of the Act, it remained available to them to settle the matter and mutually agree to end the tenancy as if the 2 Month Notice to End is conforming. To this end both parties agreed and stated their mutual desire to rely on the 2 Month Notice to End the tenancy, and with the requisite tenant compensation provisions respecting the Notice. The landlord confirmed, and the tenant agreed that the tenant would occupy the unit to the end of April 2015, and withhold April 2015 rent in compensation. The landlord asserted they were solely in agreement respecting ending the tenancy pursuant to the 2 Month Notice to End and did not agree with the balance of the tenant's claim of compensation for loss of use.

The tenant testified that they lost use of the affected bedroom since mid January 2015 and experienced inconvenience as a result, including having to launder the closet items, and store the room contents in a different area. The tenant was adamant they should also be compensated for lack of use of the affected portion of the rental unit, to date. As a result of the parties disagreement they failed to agree to settle all matters of their dispute.

Analysis

On review and preponderance of the evidence in this matter I find that **Section 32** of the Act: **Landlord and tenant obligations to repair and maintain**, and **Section 8: Repairs**, of the *Residential Tenancy Regulations* stipulate the landlord's responsibility to repair and maintain the residential property in accordance with the requirement of governing authorities and housing standards and that it be suitable for occupancy by a

tenant. Effectively, I find the landlord is responsible to address the underlying cause of the mold problem in this matter; and, if necessary, deal with their Strata to affect the repairs.

I accept the evidence of both parties that the Strata must ultimately become a party to any repairs toward a remedy of the mold problem, as they hold responsibility for the building envelope. I have not been provided evidence from the landlord that a resolution is eminent. However, the problem persists for the tenant. Given that the landlord is not fully in control of the required repairs I decline to order the landlord to make the necessary repairs. None the less, while the tenant waits I find it reasonable and appropriate that until such time as the landlord and the Strata resolve the mold problem, the tenant is entitled to compensation representing *loss of use* of a portion of the rental unit, and *devaluation of the tenancy*.

I find the tenant is entitled to compensation based on the size of the space rendered unusable - 224 sq. ft .- but also with consideration the tenant has lost use of a bedroom and closet and the resulting impact on the rest of their unit. I find that the tenant is entitled to an abatement / reduction of the payable rent under the tenancy agreement, as follows:

- 1). Rent of January 2015 in the amount of \$150.00.
- 2). Rent of February 2015 in the amount of \$300.00.
- 3). Rent of March 2015 in the amount of \$300.00.

The tenant will be given a monetary order for the sum of the above amounts.

I further find that the tenant is entitled to reduce the payable rent under the tenancy agreement, as follows:

- 4). As of April 01, 2015 - by the amount of **\$300.00** each month until the month following the month in which the mold problem is resolved to the satisfaction of both parties. In the absence of agreement by the parties in this respect the landlord has leave to apply for dispute resolution to reinstate the original rent under the agreement.

As the tenant has been partially successful in their application they are entitled to recover their filing fee of **\$50.00**.

The matter of the landlord's *2 Month Notice to End Tenancy for Landlord's Use* was not a matter in dispute in the tenant's application and I make no finding regarding it. Going forward It is not clear how the parties will act on the landlord's Notice to End, however, it must be known that it is available to either party to apply for dispute resolution of an unresolvable dispute arising from the landlord's 2 Month Notice.

Conclusion

The tenant's application, in part, has been granted as ordered, and the balance dismissed.

I grant the tenant a Monetary Order under Section 67 of the Act for their monetary award inclusive of the filing fee in the sum amount of **\$800.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: March 12, 2015

Residential Tenancy Branch

