



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC

Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing. The hearing was originally set for March 30, 2015, but on that date the landlord advised that a close family member was in serious medical crisis and requested an adjournment. The tenant did not object to the adjournment, so the hearing did not proceed on that date and was re-convened on April 24 at which time testimony was taken and the hearing concluded.

The landlord submitted approximately 41 pages of evidence to the Residential Tenancy Branch just 2 days prior to the hearing but did not serve that evidence on the tenant. As the tenant did not have opportunity to view and respond to the evidence, I did not consider that evidence in my deliberations.

Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on January 15, 2013 and ended when the tenant vacated the rental unit in August 2014.

The tenant testified that during the period in which he resided in the home, he was exposed to black toxic mold which caused significant health problems for both himself and his young daughters. The tenant testified that in March 2013, the landlord re-roofed the rental unit, covering the roof with tarps during the process. The roof leaked into the rental unit during that period and the tenant reported the situation to the landlord, sending photographs of water pooling on the floor. The landlord arranged to have repairs completed within 5 days. A significant time later, the parties discovered that the downspout was not correctly affixed to the eavestrough.

The tenant testified that throughout 2013 and 2014, he and his daughters experienced issues with respiratory issues and one daughter was admitted to emergency with a productive cough.

The tenant stated that in March 2014, he purchased an air quality test kit and followed the instructions to test the air quality in the bathroom. The test involved filling a petri dish with a solution provided in the kit, leaving it in the room for 1 hour and then covering and allowing to incubate for 24 hours. The tenant testified that the test shows mold and gives guidelines for determining whether the mold is toxic. The tenant testified that the test results showed that mold was present and that it was toxic. The tenant sent photographs of the test results to the landlord.

In July 2014, the tenant again complained about excessive moisture in the unit and told the landlord that the carpet was wet in the bedroom. The landlord attended the unit and the tenant claimed that the landlord felt the carpet and confirmed that he felt moisture. The tenant performed a second test in his daughters' bedroom and found that the air in that room tested positive for black mold. The tenant testified that he then moved his daughters from their room into his room and would no longer permit them to be in the affected room. The landlord provided the tenant with a dehumidifier in July.

The tenant testified that on August 8, he lifted the mattress on the floor of his bedroom on which his daughters had been sleeping and discovered that the underside of the mattress was wet. He determined that he could no longer keep his daughters in this environment as it presented a significant risk to their health and he immediately moved out of the rental unit.

The tenant provided photographs of the aforementioned test results as well as a letter from his doctor which states as follows:

The above named patient and his daughter [J] were seen at the clinic previously on various occasions with respiratory symptoms while living in their apartment. Air quality testing was done and mould was found. After they moved from their apartment, their symptoms improved.

There seems to be a likelihood that the mould has contributed to their respiratory symptoms.

The tenant theorized that the failure of the landlord to connect the downspout caused water to leak into the walls of the unit creating a hospitable environment for mold. He testified that humidity in the unit was at 63%, which he found to be unreasonably high.

The landlord testified that he does not believe the year or so in which the downspout was disconnected caused issues which would have affected the tenant. He acknowledged that he attended the rental unit in July when the tenant told him the carpet was wet, but stated that it was not wet. He pulled up the carpet and found the plywood underneath to be dry and unstained.

The landlord testified that the only mold he found was around windowsills and in the caulking in the bathtub enclosure. The landlord theorized that because the rental unit does not have a fan in the bathroom, there was simply excess moisture in the unit which was not vented through

open doors or windows. He stated that if there was a mold buildup during the tenancy, it was because the tenant did not adequately clean the rental unit.

The tenant argued that he kept a very clean home.

The tenant seeks compensation for his own labour in moving his belongings and his piano, paying to clean the rental unit at the end of the tenancy, the return of a portion of his rent which was paid for the full month of August even though he only resided there for the first part of the month and personal damages, which encompass the respiratory issues suffered by him and his daughters and the impact these issues had on his work and studies.

Analysis

The tenant bears the burden of proving his claim on the balance of probabilities. The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

The landlord bears the burden of maintaining the rental unit in a state of repair that complies with the health, safety and housing standards required by law. In order to succeed in any part of his claim, the tenant must prove that the landlord failed to meet this obligation. I find that the tenant has not met that burden.

The parties agreed that a downspout was improperly connected or unconnected to the eavestrough for approximately one year, but no evidence was provided to corroborate the tenant’s claim that this allowed water ingress into the home. The tenant conducted a “do-it-yourself” air quality test whose results corroborate the tenant’s claim that there was mold in the rental unit, but there is no evidence before me to show that this testing method can accurately determine the presence or types of molds in the environment. The tenant provided no evidence to show that the test has been endorsed by any type of professional body associated with air quality testing. I can give very little weight to the test results.

The tenant provided no photographs showing mold in the unit or independent witness testimony that the carpet in the rental unit was wet as a result of high humidity.

Although the tenant and at least one of his daughters have experienced respiratory issues in the past year, the doctor who suggested a connection between these health issues and mold in the unit appears to have relied on the tenant’s assertion that air quality testing had conclusively

found mold in the unit. Because the doctor based his conclusion on a faulty premise, I can give very little weight to his statement.

I am unable to find that the landlord has failed to comply with the Act or tenancy agreement.

Section 45(3) of the Act permits a tenant to end a tenancy with short notice if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after having received notice of the failure. Because I have found that the tenant has not proven that the landlord has failed to comply with a term of the tenancy agreement, I find that the tenant did not have the right to end his tenancy without providing a full month's notice. I therefore dismiss the claim for recovery of the rent paid for August.

The tenant has not met the first step of the test outlined above and I therefore find that the remainder of the claim must fail as the landlord cannot be held liable for moving costs, cleaning costs or the personal impact on the tenant arising from his concerns about mold.

Conclusion

The claim is dismissed in its entirety.

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: April 29, 2015

Residential Tenancy Branch

