



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for emergency and other repairs – Section 32;
3. An Order for a rent reduction – Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

At the onset of the hearing the Parties agreed that the tenancy has ended. As the claims in relation to repairs and a rent reduction are only relevant for an ongoing tenancy, I dismiss these claims leaving only the claim for compensation to be decided.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenancy started in October 2011 and ended on May 31, 2015. Rent of \$1,500.00 was payable monthly. At the outset of the tenancy the previous landlord collected a

security deposit of \$750.00. The current Landlord purchased the unit and took possession in December 2013.

The Tenant states that mold has been in one bedroom in the unit since the onset of the tenancy and that prior to the Landlord purchasing the unit, the previous landlord would attend the unit to clean the mold on the windows. The Tenant states that the unit was cleaned three times by the previous landlord and that in-between these cleaning the Tenant would continuously wipe off mold from the windows. The Tenant states that the mold was inspected by the Strata in the fall of 2012 and that neither the previous landlord nor the Strata agreed to any repairs and that nothing was done other than the cleaning. The Tenant states that the current Landlord was informed in approximately the fall of 2014 that the mold was starting to advance into the walls and flooring. The Tenant provided an email dated October 29, 2014 making reference to the mold still not being cleaned by the Landlord and indicates that the Tenant will have the cleaning done on her own. The Tenant states that the Landlord again refused to clean the mold in January 2015 and the Tenant provides an email dated January 7, 2015 that references mold on the window frames and the Landlord's lack of cleaning. The Tenant states that the Landlord refused to clean the mold so in both October 2014 and January 2015 the Tenant purchased mold cleaning spray and washed the windows herself. The Tenant states that she took risks to clean the mold and that it took approximately 3-4 hours each time to complete the job. The Tenant claims \$300.00 for cleaning the mold.

The Tenant states that the Landlord attended and inspected the unit himself and made minor repairs such as placing a fan off the kitchen and putting screens on the windows and doors. The Tenant states that her daughter used this room until the fall when the mold advanced and that as the mold was dangerous to her daughter's health her daughter stopped using the bedroom. The Tenant states that the daughter then slept on the couch and her mother's bedroom while her mother was gone or would stay at her boyfriend's until the end of the tenancy. The Tenant claims \$200.00 per month for 8 months for loss of use of the bedroom.

The Landlord states that it believes the Tenant contributed to the presence of mold and that it was therefore the Tenant's responsibility to clean the mold while the Landlord investigated the source and causation. The Landlord states that in July 2014 the Landlord attended the unit, cleaned the fans and exhaust and installed screens. The Landlord states that a minor amount of mold was visible and that the Landlord did not clean it as this was the Tenant's responsibility. The Landlord states that the Tenant did not inform the Landlord of any problems from that date until January 2015 when the Landlord received a cleaning invoice from the Tenant.

The Landlord states that in December 2014 while attending the unit for a repair the Tenant informed the Landlord that the situation was getting better. The Landlord states that they believe the Tenant either caused or contributed to the mold by having plants and dog water bowls by the windows. The Landlord states that the Tenant was provided with a list of instructions on how to maintain the home when mold appears.

The Landlord states that another unit in the same building was being investigated for similar mold problems and that it was determined that the problem arose from elevated condensation in the unit. The Landlord states that the Strata investigated the unit in 2013 and that the report indicated no structural cause for the mold. The Landlord does not have a copy of this report. The Landlord provided an email with portions of the report provided on the other unit.

Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party

claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party.

I accept the Tenant's credible and undisputed evidence that mold was present at the onset of the tenancy. This does not support the Landlord's position that the Tenant caused the mold. While the Landlord indicates that the unit was investigated and reported on in 2013, no copy of that report was provided to support that the Tenant caused or contributed to the appearance of mold. I accept that the previous landlord maintained the unit by carrying out regular cleaning of the mold. This strongly indicates that the previous landlord accepted responsibility for the mold and does not support that the Tenant contributed to the continual appearance of mold. I also accept that the Tenant assisted with the cleaning of the mold prior to the sale of the unit. There is no evidence of any inspection for the causation of mold since the purchase of the unit by the current Landlord and while the Landlord may have reasonably required time to deal with the Strata to determine the cause, this does not absolve the Landlord from complying with its obligation to maintain the unit. I therefore find that the Tenant has substantiated that the Landlord neglected to maintain the unit and that the Tenant is entitled to its claim to compensation for cleaning the mold in the amount of **\$300.00**.

It is clear that the Tenant reported the mold and requested its cleaning in both October 2014 and January 2015. I find nothing to support the Tenant's evidence that the Landlord was informed about the spread of the mold to the walls before January 2015. Accepting that a person would reasonably have health concerns about the presence of mold and noting that the Landlord did nothing to investigate the type of mold in the unit, I find that the Tenant reasonably refrained from using the bedroom and that a loss of use was experienced. However considering that the Tenant cleaned the mold in October 2014 and January 2015, and considering that such cleaning of the mold prior to the sale of the unit appears to have enabled the room to be habitable for some period of time, I consider that the loss claimed by the Tenant is excessive. I find therefore find that the Tenant has only substantiated a nominal amount of **\$500.00** for the loss of use of the bedroom.

As the Tenant's application had merit, I find that the Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$850.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$850.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: June 26, 2015

Residential Tenancy Branch

