Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, O, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("*Act*") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- other remedies, identified as an early end to this fixed term tenancy; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant MR ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant confirmed that she had authority to represent her husband, "tenant EF," the other tenant named in this Application, as his agent at this hearing. This hearing lasted approximately 134 minutes in order to allow both parties, particularly the tenant, an opportunity to provide full submissions at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' Application.

The landlord confirmed that he did not receive the tenants' two-page written evidence package (also included in tenants' "Application"), which was received by the Residential Tenancy Branch ("RTB") on June 24, 2015. At the outset of the hearing, I read aloud the contents of these two pages to the landlord, which included a letter from the tenants to the landlord, as well as a mold report from an engineering company, dated June 22, 2015. The landlord confirmed that he was agreeable to proceeding with this hearing on

the basis of the tenants' two-page written evidence package being considered at this hearing and in my decision. The tenant confirmed that she would email these two pages to the landlord after the hearing. Accordingly, I find that the landlord was sufficiently served for the purposes of this *Act*, as per section 71(2)(c), with the tenants' two-page written evidence package. I advised both parties during the hearing that I would be considering the tenants' two-page written evidence package at this hearing and in my decision, given the landlord's consent and despite the fact that it was served to the RTB less than 14 days prior to this hearing, contrary to Rule 3.14 of the RTB *Rules of Procedure*.

The tenant confirmed that she received the landlord's first and second written evidence packages, consisting of seven pages of evidence total, which were both received by the RTB on June 19, 2015. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's first and second written evidence packages.

The tenant confirmed that she received the landlord's third written evidence package, consisting of 149 pages, which was received by the RTB on June 22, 2015. The tenant confirmed that she was agreeable to proceeding with this hearing on the basis of the landlord's third written evidence package being considered at this hearing and in my decision. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlord's third written evidence package. I advised both parties during the hearing that I would be considering the landlord's third written evidence package at this hearing and in my decision, given the tenant's consent and despite the fact that it was served to the RTB less than 7 days prior to this hearing, contrary to Rule 3.15 of the RTB *Rules of Procedure*.

Preliminary Issue – Previous RTB Hearing

Both parties agreed that a previous hearing was held at the RTB before a different Arbitrator between the same parties regarding this tenancy. This previous hearing was held on May 5, 2015, after which a decision was issued on May 12, 2015. The decision confirmed that the tenants had leave to reapply for the relief that is now being sought in this Application, as the Arbitrator severed these issues from the tenants' previous application because she had to deal with other issues during that previous hearing. Accordingly, I find that I have jurisdiction to hear the tenants' Application at this hearing.

Preliminary Issue – Amendment of Tenants' Application

During the hearing, the tenant requested an amendment to the tenants' Application, to decrease the monetary claim sought. The tenant confirmed that she was only seeking $1,700.00 per month in rent reimbursement for the period from October 23, 2014 to July 1, 2015. The tenant confirmed that she was previously seeking $1,700.00 per month in rent reimbursement for the entire one-year fixed term tenancy period from September 1, 2014 to August 31, 2015. Accordingly, the tenants' Application is amended in this regard. I find no prejudice to the landlord in amending the tenants' Application, as the tenants are reducing rather than increasing their monetary claim.

Issues to be Decided

Are the tenants entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Are the tenants permitted to end this fixed term tenancy earlier than the date specified in the tenancy agreement?

Are the tenants entitled to recover the filing fee for this Application from the landlord?

Background and Evidence

While I have turned my mind to all the digital and documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings around each are set out below.

The landlord testified that this tenancy began on September 1, 2014 for a fixed term of one year. Monthly rent in the amount of $1,700.00 is payable on the first day of each month. A security deposit of $850.00 and a pet damage deposit of $425.00 were paid by the tenants and the landlord retained both deposits at the time of this hearing. The tenants were still living in the rental unit at the time of this hearing. A copy of the written tenancy agreement was provided for this hearing.

The tenants seek a reimbursement of their full rent paid of $1,700.00 from October 23, 2014 until July 1, 2015. The tenants claim that there was mold in the rental unit that made them sick and significantly affected theirs and their children's health, work and quality of life. The tenant testified that she noticed her family was becoming sick around

the third or fourth week of September 2014. The tenant stated that she noticed mildew in the corner of the garage after her son developed a chronic cough and that she pressure-washed this area in October 2014. The tenant reported that she noticed black mold around the patio door area of the rental unit and sent a text message to the landlord on October 23, 2014, stating: “there is black mold on the front corner of the house as well as on the patio door. But all of these things I have been nervous to address with you because I am still waiting for the sink to be fixed.” The landlord provided a copy of this text message with his written evidence. The tenant stated that she did not receive a reply from the landlord, while the landlord claimed that he did not see the text message. The tenant said that she advised the landlord again about the mold issue by way of a telephone conversation in late November or early December 2014, while the landlord denied talking on the with the tenant. The tenant explained that she advised her doctor about the mold and he advised her that the health problems that she and her son were experiencing were due to this mold environment. The tenant provided copies of clinical records from her doctor and her son’s doctor. The tenant testified that she purchased an air purifier which helped with the mold but did not resolve the situation.

The tenant maintained that the landlord delayed in investigating mold, despite repeated requests from the tenants. The tenant explained that when the landlord finally investigated the mold, he hired non-professionals to do so, including home inspectors and general contractors who did not specialize in dealing with mold. The tenant claimed that she investigated the people hired by the landlord and determined that they were not qualified to deal with mold issues. The tenant confirmed that she advised the landlord to hire professionals to deal with this mold issue but that he refused to do so. The tenant stated that the tenants were required to perform and pay for their own air quality test for $275.00 with company M, because the landlord did not initially do so. The tenant indicated that the air quality test showed dangerous levels of mold in the rental unit and that the landlord did nothing to professionally remediate the situation. The tenant stated that the landlord finally took action after she reported a water intrusion problem inside the house, the landlord sprayed a mold inhibitor that was not professionally recommended and that worsened the mold and the tenants’ and their children’s health problems. The tenant maintained that the landlords’ own air quality test, which was done by non-mold-professionals, performed on June 5, 2015, showed dangerous and toxic levels of mold. The tenant stated that she hired professionals to interpret these results on June 22, 2015 in a one-page report and that the tenants were advised to leave the rental unit to save their health. The tenant confirmed that the landlord did nothing to remedy the situation since his air quality test was reported on June 8, 2015.

The landlord acknowledged that there was mold inside the rental unit but testified that it was not due to his negligence. The landlord confirmed that the tenant only complained of mold outside of the rental unit in her February 7, 2014 email to the landlord. The landlord noted that he had no reason to test mold inside the rental unit. The landlord explained that he hired a registered home inspector to examine the exterior of the rental unit to determine whether mold was growing on the outside of the house. The tenant confirmed that this inspector examined the unit after February 12, 2015. The landlord maintained that the inspector determines whether a house can be certified to be sold and that the inspector advised him that he was qualified to report about mold. The landlord indicated that the inspector informed him that there was some mold on the bricks of the chimney outside, which was common and due to moisture. The landlord noted that there were no other reports of mold so he did nothing further at that time.

The landlord indicated that on May 15, 2015, the first water intrusion in six years occurred inside the rental unit and that the tenants delayed in reporting this incident. The landlord stated that no remediation was done to immediately resolve the water intrusion and that this caused false readings in the tenants' air quality test performed on March 25, 2015. The landlord noted that he called a professional company, WR, about the water and mold problem inside the rental unit. He explained that the company told him to remove everything from under the stairs and spray the area with a mold inhibitor and that this was done. The landlord stated that he believed that the mold problem was resolved after this spraying.

The landlord stated that after receiving the tenants' Application, he had an air quality test done on June 5, 2015 by company M, the same company used by the tenants for their air quality test in March 2015. The landlord stated that he was verbally advised by company M, that everything looked good, the rental unit "basically passed" the mold test but that the tenants did not properly air out their rental unit by opening windows. The landlord maintained that the company advised him that the mold was not toxic, that it was not a big issue and that recommendations were made to get an ozone treatment and hepa vacuum. The landlord said that he was denied access by the tenants to complete these recommendations because the tenants wanted to wait for the outcome of this hearing.

Analysis

Ending Fixed Term Tenancy Early

Both parties agreed that this tenancy ends effective at 1:00 p.m. on July 1, 2015. The tenants agreed to vacate the rental unit by that date and time. The landlord agreed not

to pursue the tenants for a monetary order for rental loss as a result of ending this fixed term tenancy early, only on the condition that the tenants vacate the rental unit by the above time and date. Accordingly, I order that this fixed term tenancy ended effective at 1:00 p.m. on July 1, 2015.

Repairs to Rental Unit

As both parties have agreed that this tenancy ended effective on July 1, 2015, I make no orders with respect to repairs at this rental unit. The tenant confirmed that although this tenancy was ending, the tenants were seeking mold repairs for future tenants at this rental unit, so that they do not encounter the same problems with mold. I can only make repair orders relating to these tenants' Application made by these named parties for this specific tenancy. I cannot make repair orders relating to this rental unit for future unknown parties for future unknown tenancies. Accordingly, the tenants' Application for an order requiring the landlord to make repairs to the rental unit, is dismissed without leave to reapply.

Burden of Proof for Damage and Loss

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and show that efforts were made to mitigate the loss or damage.

In this case, the onus is on the tenants to prove, on a balance of probabilities, the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Compensation for Repairs and Cleaning

The tenants seek reimbursement for costs incurred at the beginning of this tenancy at the rental unit. The tenants seek $477.25 for pressure washing, $372.50 for carpet cleaning, and $143.00 for a new pool cover.

Both parties agreed that the tenants agreed to complete pressure washing and carpet cleaning at the beginning of this tenancy, at the tenants' own cost. Both parties agreed that there was no request for the landlord to pay for these services. The documentary evidence submitted by both parties, including letters and emails, confirm these facts. However, the tenant testified that the landlord should reimburse the tenants for the pressure washing and carpet cleaning costs because the landlord did not fulfill his responsibilities in the tenancy agreement addendum, noted at page 21 of the tenants' written evidence. The tenant confirmed that the landlord did not remove the hot tub or complete proper pool cleaning at the beginning of this tenancy, as required. The tenant stated that as the landlord did not fulfill his agreement, the tenants should not be required to fulfill their agreement to perform the above tasks, particularly as they offered to do this work, not that they were required to do so.

I find that the tenants agreed to perform pressure washing and carpet cleaning at the beginning of this tenancy. They offered these services to the landlord at their own cost. Although the tenants claim that the landlord did not fulfill his agreement to perform certain services at the beginning of this tenancy, this is irrelevant to the tenants' claim for reimbursement. The tenants are claiming for losses relating to the pool and hot tub, yet they seek reimbursement for unrelated services including pressure washing and carpet cleaning. The tenants have not met the first or second parts of the burden of proof test above. The tenants have failed to show the damage or losses that they have suffered from performing carpet cleaning and pressure washing, that are specifically related to these two services. They have also failed to show that the landlord caused them damage or loss relating to pressure washing and carpet cleaning. Accordingly, the tenants' Application for reimbursement of $477.25 for pressure washing and $372.50 for carpet cleaning, is dismissed without leave to reapply.

The tenants seek reimbursement of $143.00 for purchasing a pool cover for the rental unit pool. The tenant testified that the pool cover supplied by the landlord had a tear and was very dirty. The tenant stated that as per the tenancy agreement addendum, the landlord was required to ensure that the pool was clean and in good working order. The tenant indicated that a pool cover is part of ensuring that the pool is in good working order. The tenant indicated that although the tenants were required to maintain the pool, the landlord did not supply a proper pool cover at the beginning of the tenancy. The tenant confirmed that she did not provide any photographs of the pool cover showing the tear, as the cover was very heavy and had been stored in the shed. The

tenant stated that she did not previously ask the landlord to pay for the new pool cover that the tenants bought because she was already experiencing other more important problems with the landlord and was having difficulty communicating with him.

The landlord testified that the previous tenants of this rental unit did not use the pool cover so he stored it in the shed. The landlord stated that he was unaware that the pool cover had a tear in it. The landlord confirmed that he did not see the tear and the tenants did not provide any proof of the tear, such as photographs. The landlord indicated that dirt is not a sufficient reason to purchase a new pool cover. The landlord noted that he was only told about a problem with the pool cover after the tenants purchased a new one, not before.

I find that the tenants did not meet the first part of the burden of proof test above. I find that the tenants failed to provide sufficient proof, such as a photograph, that the pool cover was torn, such that a new cover was required. Accordingly, the tenant's Application for reimbursement of $143.00 for a new pool cover, is dismissed without leave to reapply.

Mold Issue

The tenants seek rent compensation of $1,700.00 per month from October 23, 2014 to July 1, 2015 for living in the rental unit with mold. The tenants also seek $275.00 for having an air quality test for mold performed at the rental unit.

I accept both parties' evidence that there was mold in the tenants' rental unit. However, I find that the landlord fulfilled his obligations under section 32 of the *Act*, to ensure that the rental unit complied with health, safety and housing standards required by law and that the unit was suitable for occupation by the tenants, having regard to its age, character and location. I find that, on a balance of probabilities, the tenants were unable to show that the landlord caused the mold, that the mold repair took longer than industry standards or that the landlord caused a delay in the repair. I find that after their initial reporting of the mold problem, the tenants did not adequately follow up with the landlord to ensure that he had received their text message on October 23, 2014. The landlord denied any phone calls regarding the mold problem. The tenants waited over three months before sending an email to the landlord on February 7, 2015, despite the fact that they claim that their family was incredibly sick, requiring medical attention. Once that email was received, the landlord took action by ensuring that the rental unit was examined to determine whether mold was present.

The landlord confirmed that after no irregular reports of mold were found on the outside of the house, where he says the tenants initially reported the mold, he assumed the issue had resolved. The tenants maintained that it was the mold inside the house that was the main problem. The tenants had an air quality test completed by company M on March 25, 2015. The tenants indicated that there were unacceptable mold levels in the rental unit, as per company M's report. The landlord indicated that water intrusion was a factor and he took action by having the mold area sprayed with mold inhibitor, as was recommended to him. I find that the tenants were unable to provide sufficient evidence that the landlord caused the mold to worsen by spraying the mold inhibitor. I find that the landlord took further action by having his own air quality test performed using the same company M, which was employed by the tenants. The landlord indicated that company M advised him that the mold levels were not toxic. The landlord stated that the tenants' failure to sufficiently air out the rental unit, may have been a factor in contributing to the mold, as was advised to him by company M. The landlord has been unable to implement recommendations to remediate the mold after receiving his report in June 2015 because access to the rental unit was prevented by the tenants until after this hearing. The tenants' report, dated June 22, 2015, states that the company cannot comment on company M's credentials and that company M's information and recommendations differed from theirs.

I find that the tenants often prevented access to their rental unit by the landlord, as indicated in the emails, text messages and letters provided by the parties. The tenants complained of insufficient notices from the landlord to enter the rental unit, as well as the tenants' family and work obligations, when advising the landlord not to enter the rental unit. Therefore, I find that any potential delay in examining or rectifying the mold in the rental unit resulted primarily from the tenants' actions and not the landlord's.

Therefore, the tenants' claim fails on the second part of the burden of proof test above. The tenants cannot establish that the landlord caused the mold, that the mold repair took longer than industry standards or that the landlord caused a delay in the repair, such that the landlord's actions or negligence were in violation of the *Act, Regulation* or tenancy agreement. Accordingly, I dismiss the tenants' Application for a monetary order of $1,700.00 per month from October 23, 2014 to July 1, 2015 for damage or loss relating to mold in the rental unit, without leave to reapply.

Although the tenants obtained an air quality test, I find that the landlord was taking appropriate action to address the mold issue, despite the fact that the tenants did not agree with the landlord's testing. Therefore, I find that the tenants are not entitled to compensation of $275.00 for the air quality test performed at the rental unit and I dismiss this portion of their Application without leave to reapply.

As the tenants were mainly unsuccessful in their Application, they are not entitled to recover the $100.00 filing fee from the landlord.

Conclusion

I order that this fixed term tenancy ended effective at 1:00 p.m. on July 1, 2015.

The tenants' Application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, an order to the landlord to make repairs to the rental unit, and to recover the filing fee, is dismissed without leave to reapply.

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: July 28, 2015

Residential Tenancy Branch