



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Top Producers Realty Ltd., Property Management Division
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, OLC, ERP, RP, RR, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order; an order to have the landlord complete emergency and other repairs; and a rent reduction.

The hearing was originally convened on December 22, 2015 via teleconference and was attended by the tenant; her advocate; the landlord and her two agents. Due to illness the parties agreed to an adjournment and the hearing was reconvened on February 19, 2016. The reconvened hearing was attended by the same participants as the December 22, 2015 except for the tenant's advocate who was dealing with an emergency. I note the tenant did not seek to adjourn the hearing in the absence of her advocate.

An Interim Decision was issued on December 22, 2015 granting the adjournment which should be read in conjunction with this decision. The tenant submitted her original Application for Dispute Resolution on October 28, 2015; her first amendment on October 30, 2015; her second amendment on December 7, 2015; and her third amendment on December 10, 2015. The issues considered in this decision based on that original Application and all amendments are noted below.

At the outset of the reconvened hearing the tenant submitted that she had recently received additional evidence from the landlord and questioned whether or not the landlord was allowed to submit any additional evidence during the adjournment.

I referred the parties to the Interim Decision where I had ordered that "the landlord may serve to the tenant and to the Residential Tenancy Branch any further evidence in response to the amended quantum of the tenant's claim that they wish..." As such, I have accepted and considered the additional evidence submitted by the landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation; to an order to have the landlord complete emergency and other repairs;

to a rent reduction; and to recover the filing fee from the landlord, pursuant to Sections 32, 33, 65, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

Both parties submitted into evidence copies of a tenancy agreement and addendums signed by the parties on May 24, 2013 for a 1 year and 7 day fixed term tenancy beginning on May 24, 2013 that converted to a month to month tenancy on June 1, 2014 for the monthly rent of \$1,300.00 due on the 1st of each month with a security deposit of \$650.00 paid.

The tenant alleges that despite repeated attempts to have the landlord deal with a mould problem and issues related to the former marijuana grow operation in the home the landlord has failed to take any action. The tenant submits as a result, she and her family's health had been compromised. She also submits that she has had to discard many of her personal belongings, suffering both an emotional and financial loss.

The tenant seeks orders to have the landlord complete a lengthy list of repairs and for compensation for the landlord's failure to deal with these issues in a timely manner.

In a letter dated November 2, 2015 from the tenant to the landlord the tenant submits her "formal request for the following repairs..." She goes on to ask the landlord to: "compensate us for their oversights the make the appropriate and necessary repairs needed to rectify the situation and return our possessions to a healthy state" [reproduced as written].

The tenant also submitted a typewritten document addressed to the landlord and originally dated October 25, 2015 and then updated November 11, 2015. This document listed all of her requests for repairs, as follows with updates of the status of the requests provided by the tenant during the hearing:

| Request | Update |
|---------------------------------------|---|
| Rain Gutters cleaned | Completed but now there are split downspouts |
| Pruning of cherry and nut tree | The landlord had pruned some of the cherry but nothing else |
| Dryer Vent | Completed |
| Washing machine drain cleaned | Completed |
| Washing machine enamel | Believes it was completed but believes the machine should be replaced |
| Chimney/fireplace | Not completed |
| Fireplace cleaning of blackened front | Not completed |
| Front Hedges and bushes trimmed | Not completed |
| Replace yellow wall paint | Not completed |
| Other areas to be painted due to | Not completed |

| | |
|--|-----------------------------|
| cracks in walls and blistering paint | |
| Windows not closing; latching; locking; or "fold out properly" | Not completed |
| Master bedroom door falling of hinges | Completed |
| Threshold replacement | Completed |
| Stovetop vent/fan | Not completed |
| Ventilation system for kitchen | Not completed |
| Replace replacement fridge | Not completed |
| Kitchen drawer faces repaired | Completed |
| Replace "cheep" looking blinds | Not completed |
| Bathroom tub enamel | Completed |
| Bathroom caulking | Completed but may need more |
| Basement door | Not completed |
| Basement humidity – screen door requested | Not completed |
| Basement window | Not completed |
| Top of stairway ventilation system | Not completed |
| Basement furnace and duct work | Completed |
| Foundation cracks | Not completed |
| External drainage repairs | Not completed |

In support of her request for these repairs the tenant has submitted several photographs. A larger majority of the photographs relate to the humidity/mould issues. Two pictures are of ceilings (bathroom and hallway) for painting; 1 of a window frame regarding condition of windows; 1 of one gutter in support of her cleaning request.

In response to the tenant's requests for repairs the landlord has submitted a documented summary of work done on the property prior to the start of the tenancy and throughout the duration of the tenancy. The landlord also provided copies of several receipts; invoices; and local municipal inspection slips and certifications.

The tenant also seeks compensation specifically related to the issues of humidity and mould as follows:

| Description | Amount |
|---|--------------------|
| Expenses – including air quality test; postage; land title search; air purifiers; various supplies; landfill fees; cleaners; gas; medications; extra hydro usage; rental truck and storage fees; car detailing; area rug cleaning | \$5,653.46 |
| Personal belongings including clothing; furniture; games; toys; electronics; books and magazines; bedding; pictures; keepsakes; etc. | \$25,108.00 |
| Cleaning | \$1,966.25 |
| Aggravated Damages | \$5,000.00 |
| 4 Months – use of ½ house and no heat | \$2,600.00 |
| No chimney/fireplace – 18 months | \$1,800.00 |
| Total | \$42,127.71 |

The tenant acknowledged, at the start of the hearing, that she understood the maximum claim I could consider is \$25,000.00 and that by pursuing her claim through the Residential Tenancy Branch she could not split her claim and pursue any additional amounts either through a new Application for Dispute Resolution or through any other court, for the same issues raised in this Application.

The tenant submits that due to problems with remediation work to the house and cracks and drainage problems in the basement of the property she and her family have suffered significant health problems caused by high humidity and mould.

The tenant submits that she began smelling mould coming through the ventilation system. She states the odours became so bad that she had to stop using the furnace and she had to leave the windows open to get fresh air into the rental unit.

The tenant submits the landlord failed to complete the remediation of the rental unit after it had been a grow operation. She obtained records from local authorities regarding inspections and occupancy orders she obtained through a freedom of information request.

The tenant submits that these records show that the landlord did not complete all work required. She stated that Inspection Slip dated September 22, 2011 that states "all items requested from previous inspection are complete" confirms only that the items identified on the August 25, 2011 Inspection Slip such as installation of railings and guard rails and the replacement of basement door. She asserts that the September 22, 2011 Slip does not confirm completion of all electrical; plumbing; heating systems or any other grow remediation work had been completed.

The landlord submits that Inspection Slips are cumulative. That is to say that once an item is completed and the landlord received an Inspection Slip confirming it was completed it was never again mentioned. They further submit the railing work was the last of all work to be completed.

Both acknowledge that a no occupancy order had been placed on the house prior to remediation. Both parties acknowledge the no occupancy order had been removed. However, the tenant submits that the no occupancy order was only lifted, as it was explained to her, on occupancy by an owner and not for any tenants.

The tenant submits also that based on recommendations from various sources she has had look at the property that the basement requires the sealing of foundation cracks and exterior drainage. She also stated that she cannot get insurance on her belongings due to condition of the structural problems of the basement and the drainage problems.

While the tenant submitted into evidence e-mail correspondence with her insurance adjuster that included a site report, dated November 18, 2015, by a restoration

specialist she did not include any correspondence confirming that her insurer would not cover any losses or the reasons that they wouldn't cover them.

In note the report from the restoration specialist states a number of relevant points including but not limited to these listed here:

- "While onsite I noticed that every one of the windows upstairs and downstairs were wide open which is allowing a huge amount of humidity into the house and felt as if the air in the house was fully saturated with water. The laminate floors were covered in condensation";
- "The brand new furnace has been blocked off at all fresh air returns and all the floor vents have been blocked off not allowing proper heating and air circulation which is causing many different issues. The furnace has been shut off since it was installed as they thought the furnace was the cause of the bad air in the house, possibly mould";
- "The basement has cracks in the foundation and what appears to be poor perimeter drainage which is causing the water to be hydrolicly pressured through the cement floor slab in a few areas. (I have advised they should dig up the perimeter drainage and replace it as well as apply a foundation water proof member at the same time to eliminate the chance of water seepage through the cracks in the foundation walls;
- "They had an air quality test done and the results came back poor air quality most likely due to mold spores in the basement furnishings like carpet, furniture, mattresses and clothing as well as the insulation and wall drywall.

The landlord submits they have determined that there is not a problem with water ingress with the exception of record rainfall event in November 2015 and after a water event where the tenant could not reach the water shut offs to stop water leak from the hot water tank and washing machine.

The landlord submits that due to the large volume of items stored, primarily in cardboard boxes the water from these events could not reach the drain and wicked into the tenant's boxes and belongings causing the high humidity and start of mould growth.

The landlord further submits that the tenant then, as per the restoration specialist's report, caused further high humidity by leaving the windows open all the time and not using the furnace. During the hearing the tenant testified that she had only had the windows opened all day the day of the inspection to clear it out for the inspector.

I note, in the tenant's letter to the landlord November 2, 2015 she stated: "I have since plugged every upstairs vent to the best of my ability, and will not turn on the furnace and it is blowing the air from the basement upstairs – also making the floor spongy and releasing smells and dust from below the laminating (carpet was not removed from grow op) we have purchased air purifiers, kept windows opened, purchased space heaters, cleaned continuously, continue to have fans blowing to circulate air, and still we can not

control the copious amounts of dust that we find on all of our things, or stop the downstairs air from seeping into the upstairs air space and contaminating our things.” [reproduced as written].

The landlord submits that they had not refused to investigate the tenant’s complaints but rather they had required that the tenant move some of her stored items in the basement so that they could send in experts to assess the situation. The landlord submits that they provided the tenant with a heap filter for the furnace but that she would not use it. They also submit that once the tenant had removed her stored items they completed the humidity level as returned to a normal level and once it the room temperature reached 70 degrees the level was at 47%.

The landlord further submits that for a number of the repairs requested the landlord was not aware of the request for these items until the tenant submitted her letter dated October 25, 2014 updated November 11, 2015 or 13 days after she submitted her Application for Dispute Resolution. Since receiving the request the landlord has been attempting to address of the requested repairs.

The landlord did specifically refuse to do any work on the chimney and fireplace as they submit that “fireplace was not included in the tenancy agreement”. I note the tenancy agreement did not specifically preclude the tenant from use of the fireplace. As such, during the hearing, I advised both parties that since there is not a clause in the tenancy agreement to specifically prohibit the use of the fireplace that the tenant has the right to use the fireplace during the tenancy.

The landlord also submits that the tenant has provided no evidence to establish a causal link to any of her family’s medical conditions being related to mould, even if the landlord were found to be responsible for the mould problem.

In addition, the landlord submits that they should not be held responsible for the replacement of any items discarded by the tenant because they have no way of knowing whether the items discarded were so damaged they required to be thrown away.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32(1) of the *Act* requires the 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 make it suitable for occupation by a tenant.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

I find, based on the submissions of both parties that there has existed in the basement of the rental unit a humidity and mould problem.

In regard to the tenant's claims that the landlord failed to remediate the property as required by local authorities, I find the tenant has failed to provide any evidence the landlord failed to do so.

I find that the landlord's explanation that Inspection Slips are cumulative and one issued at the end of the remediation would not contain any reference to earlier corrected items to be reasonable.

Further, I find it inconceivable that a local authority would release a no occupancy order if the property was not suitable for occupation by everyone. I find it completely unlikely that such an authority would release the no occupancy order only if the owner were going to live in it and not rent it to a tenant as asserted by the tenant.

With the exception of one documented report, from her insurer's restoration specialist, I find the tenant has provided limited evidence from any of the people she indicated had recommended work that should be completed on the structure of the basement and the exterior drainage system.

Despite the tenant's claim that her insurance was denied because of the structural work required I note the restoration specialists report states: "I would be surprised if anything would be covered under insurance as it would have been advisable to move her family out of this rental knowing the amount of issues with their health and visible signs of mold and even an air quality test that came back very bad air quality...." [reproduced as written].

However, I do find the tenant had completely filled the basement with a large volume of items that prevented proper air circulation in the basement; included contents that are known to be conducive to mould growth; and failed to ensure that her possessions were not, at the very least, contributing to a moisture and mould problem.

Furthermore, I find, from the tenant's own submissions that she refused to use the furnace; blocked the ventilation system and left open windows throughout the house all were major contributors to the causation and exacerbation of the mould problem.

Based on all of the above, I find the tenant has failed to provide any evidence that landlord is responsible for the cause of the mould problem or that the landlord failed to take action to address the issue as soon as possible.

Based on the evidence of both parties, I find, on a balance of probabilities the mould began after the water events as submitted by the landlord and that it was the tenant's failure to ensure her belongings had not been impacted by the water events that created the environment for the mould problem to begin.

I find the tenant's delays in complying with the landlord's request to remove items from the basement impeded the landlord's ability to respond to any problem in the basement.

Further, I find the tenant's own actions contributed to the exacerbation of the mould problem when she refused to turn on the ventilation system and left windows open during the wet winter season.

As a result, I find the tenant has failed to establish that the landlord has violated the *Act*, regulation, or tenancy agreement. Therefore, I find the tenant has failed to establish that any losses she may have suffered as a result of a mould problem was caused by such a violation and I dismiss her entire monetary claim for any costs she has incurred.

Specifically, I dismiss the tenant's claim for the following:

- Expenses – \$5,653.46
- Personal belongings – \$25,108.00
- Cleaning – \$1,966.25
- Aggravated Damages – \$5,000.00
- 4 Months – use of ½ house and no heat – \$2,600.00

However, as noted above, during the hearing I ordered that the tenant was allowed to use the fireplace and the landlord had no authority under the *Act*, regulation or tenancy agreement to prohibit the use of it. As the landlord has not allowed the tenant to use the fireplace, I find the tenant has suffered a loss in the value of the tenancy.

I accept the time period of 18 months to be a reasonable timeframe to seek compensation for and I find \$100.00 per month is a reasonable value to reduce the rent for each of those months.

As I have now ordered the tenant is allowed to use the fireplace, the tenant will be at liberty to file a new Application for Dispute Resolution seeking further compensation should the landlord fail to allow usage.

Section 33(1) of the *Act* defines "emergency repairs" as repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purpose of repairing:

- Major leaks in pipes or the roof,
- Damaged or blocked water or sewer pipes or plumbing fixtures,
- The primary heating system,
- Damaged or defective locks that give access to a rental unit, or
- The electrical systems.

Section 33(3) states a tenant may have emergency repairs made only when all of the following conditions are met:

- Emergency repairs are needed;
- The tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs; and
- Following those attempts, the tenant has given the landlord reasonable time to make the repairs.

I agree with the landlord that the tenant's request for an order to have the landlord complete any repairs is premature because she only provided a written request after applying for the order.

Based on the above, I will not order the landlord to complete any of the requested repairs with the exception of ensuring the fireplace and chimney are safe to be used by the tenant, including having it inspected and cleaned by appropriate technicians and/or service providers.

However, I will order the landlord should conduct a thorough inspection of the rental unit and determine if any of the requested repairs are necessary and if any damage has occurred to residential property that requires attention and or repair either as an ongoing maintenance issue or as a result of the tenant's recent actions.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,800.00** comprised of compensation for not being allowed to use the fireplace. I order the tenant may deduct this amount from future rent payments pursuant to Section 72(2)(a).

As the tenant was largely unsuccessful in her claim I dismiss her claim to recover the fee paid by the tenant for this application.

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 11, 2016

Residential Tenancy Branch