



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WINSTEN PROPERTY MANAGEMENT INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to have the landlord make emergency repairs for health or safety reasons, to have the landlord make repairs to the unit, to reduce rent until the requested work is done, and to recover the filing fee from the landlord.

Both parties appeared.

Preliminary matter

In this case, the tenant provided no details of dispute in their application. Section 59 (2) of the Act states an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

The landlord's agent indicated that the tenants' application is confusing; however, they are prepared to deal with the issue of mould.

Issues to be Decided

- Should the landlord be ordered to make emergency repairs?
- Should the landlord be ordered to make repairs?
- Are the tenants entitled to a rent reduction?
- Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

The parties entered into a fixed term tenancy which began on January 1, 2016, and expires on December 31, 2016. Rent in the amount of \$1,650.00 is payable first of each month. The tenants paid a security deposit in the amount of \$825.00.

The tenant testified that shortly after they moved in to the rental unit, they developed a cough that was only persistent when in the rental unit as it would go away when they were outside. The tenant stated that they have asthma as well as one of their children. The tenant stated that they thought it might be the air ducts, so they had them cleaned on January 22, 2016.

The tenant testified that their cough did not get better after the air ducts were cleaned, so they hired a home inspector on February 10, 2016, and report was completed on February 16, 2016. Filed in evidence is a copy of the report.

The tenant testified that the report indicated that the air quality was within the acceptable levels; however, the report indicated that the attic insulation and attic sheeting showed presence of mould growth.

The tenant testified that as soon as they notified the landlord's agent they attended the property and visually looked in the attic. The tenant stated that later the landlord informed their agent that no further investigation is required as the air quality was within a satisfactory level.

The tenant testified that on February 22, 2016, they sent an email to the landlord's agent after the owner made the decision not to take any steps to remediate the issues, suggesting the landlord do the following in an email. Filed in evidence is an email which the tenant recommend the following,

- Visual inspection of the attic to identify any areas where there is evidence of mould, above what has already been identified;
- Clean and disinfect any areas where there is evidence of mould including a 4 foot diameter;
- Cap/seal all ceiling fixtures which would allow contaminated air to enter the living portion of the house including but not limited to light fixtures, exhaust fans, and attic access hatches; AND
- Create an air current in the attic so that any air borne spores will be caught up in said current and expelled to the outside environment (an intake and out take fans as a suggestion).

The tenant testified that they received a response from the landlord's agent by email, that that they had two options, that they could pay to do the work themselves at their expense or give notice to end the tenancy. Filed in evidence is an email dated February 23, 2016.

The landlord's agent testified that landlord was not prepared do the repairs that were request as they were unnecessary. The agent stated that the email of the tenants' also wanted to amend their lease agreement to reduce the fixed term agreement and dissolve the liquidated damages clause because the tenants believe the suggested repairs would only be temporary.

The landlord's agent testified that they hired their own hazmat services and receive a report dated March 28, 2016. The agent stated that the report indicated that the premises is in good condition; however, there was one light box that had minor mould due to air leaking into the attic from the interior. Filed in evidence is a copy of the hazmat services report dated March 28, 2016.

The landlord's agent testified that they are prepared to follow the recommendations for the repair of the one light box; however, they are not prepared to have the attic visually inspect on the basis stated in the report as it is unnecessary and excessive once the work has been complete by the hazmat serves company .

The landlord's agent stated they are prepared to contact the hazmat services company within the next 24 hours to arrange a date and time for the repair to be made.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

- 33 (1) In this section, "**emergency repairs**" means repairs that are
- (a) urgent,
 - (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
 - (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

In this case, the tenants have applied for emergency repairs for health and safety reasons. I find neither the tenant's report dated February 16, 2016, nor the landlord's report dated March 28, 2016, show that any urgent repair is required for health or safety. The tenants' report show the air quality is within an acceptable level. I find the tenants' have failed to prove an emergency repair is required. Therefore, I dismiss the tenants' request to order the landlord to make emergency repairs.

- 32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
 - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenants further seek and order for repairs. However, I find the landlord has taken reasonable steps to address the tenants concern, and there is no evidence that the property does not comply with health and safety standard, as the air quality is within an acceptable level. There was no evidence that the premise is not suitable for occupation.

Further, the repair to attic light box is minor. The air quality in the attic possesses little risk, if any, to the tenants, and does not devalue their tenancy. I find the tenants are not entitled to a rent reduction.

In addition, the landlord's agent stated that the landlord is prepared to follow the recommendations in the report dated March 28, 2016, with some exceptions, as noted in their testimony, within the next 24 hours by arranging a date and time for the repair to be completed.

I find the landlord's response to have their own hazmat report completed and follow up actions reasonable. The landlord is not under any obligation to make repairs that are not necessary, simply because they are requested by the tenants, as the landlord has the right to make repairs as they determine appropriate.

I find the tenants have failed to prove a violation of the Act by the landlord. Therefore, I dismiss the tenants' request to order the landlord to make repairs.

However, as the landlord has agreed to make the repair, once the landlord has arranged the date and time for the repair to be completed, they are to inform the tenants by telephone of the date and time and follow up by email. As that is the way the parties agreed to communicate to have the repair completed at the hearing.

As I have found the tenants have failed to prove a violation of the Act by the landlord, I decline to award the tenants the recovery of the filing fee.

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 14, 2016

Residential Tenancy Branch