



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METCAP-STARLIGHT PROPERTY MANAGEMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC MNSD OLC ERP RP FF

Introduction

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

- a monetary order for compensation for damage or loss including emergency repairs under the *Act*, regulation or tenancy agreement pursuant to section 67;
- a monetary order for the cost of repairs to the rental unit pursuant to section 33;
- authorization to obtain a return of all or a portion of the tenant's security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlord to make (emergency) repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application pursuant to section 72.

Both parties attended the hearing (including four representatives for the landlord) and all were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. The parties were advised at the outset of the hearing that the tenant's application for the return of his security deposit was dismissed with leave to reapply. The tenant's application for the return of his security deposit is more appropriately addressed separately from this application and at the end of the tenancy with consideration to section 38 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order/compensation from the landlord?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, including an order to the landlord to make (emergency) repairs to the rental unit?

Background and Evidence

This tenancy began on May 1, 2004. The tenant/applicant testified that he has had a variety of problems with the condition of the rental unit since the outset of the tenancy. The tenant testified that he believed there was mold in the rental unit. The tenant advised the landlord in June 2016 however he testified that he believed the landlord was already aware of the mold issue. The tenant testified that he had advised the previous landlord of his concerns regarding mold in the unit. The tenant submitted that the landlord did not take the appropriate steps to address the mold in his unit.

The tenant testified that, as well the landlord's delay in taking steps to address any mold in the unit, the landlord should have caused minimal disruption in making any repairs but the landlord's steps were very disruptive. The tenant testified that he received many notices to enter from the landlord. Copies of the notices to enter the rental unit were submitted as evidence at this hearing: they totalled four and were dated; May 30, 2016; June 3 (2 notices this date) and 7, 2016 with four dates for proposed entry into the rental unit.

The landlord testified that, on several occasions the tenant refused to allow access to the rental unit in a timely manner. The landlord submitted email correspondence from his contractor to indicate that the tenant had not only denied access to the rental unit but threatened the crew who attempted to enter the rental unit. The landlord submitted a copy of a warning letter sent to the tenant after his interaction with the work crew.

The tenant testified that he was not prepared to let contractors into the home until he had been provided with a safety plan. The tenant testified that he requested a "safe work plan" to address safety requirements when remediating mold but that the landlord did not meet this request. The landlord submitted copies of safety planning reports to address any further health issues including asbestos. The landlord also submitted copies of quotes for the remediation and leak repair work to be done to the tenant's unit.

The tenant testified that, out of concern for his health, he stayed in a hotel at a rate of \$150.00 for 5 nights in order for the landlord to be able to conduct repairs/remediate the mold issue within the rental unit.

The tenant sought \$3865.00 – 50% of his rent since September 2015 – the date when he testified that he first reported the mold issue to the landlord. The tenant submitted photographic evidence to support his claim at this hearing. The photographs show; water damage and black marks on a ceiling near a window and on wood finishing.

The landlord's representative ("the landlord") submitted that the tenant's claim was an abuse of process. According to the representative's undisputed submissions, and the testimony of the landlord, the current landlord took over this property on May 1, 2016 and became aware of the issue at the tenant's rental unit on May 6, 2016. The landlord submitted that, by May 24, 2016, a report regarding mold in the tenant's rental unit had been created and served to the tenant.

The landlord submitted a copy of the May 24, 2016 report. The landlord submits that the report concludes there is no health concern within the unit and any materials that could become hazardous to health were removed. The report states that water staining and possible mold growths were present on the ceiling of the rental unit near a damaged sliding glass door as a result of a leak above that door. The report identified a slightly elevated level of mold spores and recommended that the leak be repaired and damaged materials (by water and mold) be removed. The landlord submitted that mold remediation was done within the rental unit.

Witness W, the on-site property manager testified on behalf of the landlord. Witness W confirmed that repairs were completed June 21, 2016 and that the tenant was offered a hotel room at \$150.00 per night in order to allow him to be outside of the rental unit while the repair work was being conducted.

The landlord submitted that the tenant has been unreasonable in some of his requests during this process. The landlord submitted that he made sufficient attempts to satisfy the tenant and address his concerns with the appropriate level of compensation and action. The landlord submitted that the tenant has not proved any damages in that he provided no documentation or witness testimony and that he is not credible in his own testimony. Further, the landlord submitted that any claim by the tenant has not been mitigated. For example, the landlord submitted that, if the tenant had let contractors into the rental unit immediately, the mold remediation could have been done faster. As well, the landlord submitted that the tenant is unfairly holding the current landlord responsible to have the same knowledge as the previous landlord. The landlord submitted that the tenant has provided no evidence to suggest that the new landlord was aware of the mold in the unit before being advised by the tenant on May 6, 2016. The landlord submitted that the tenant provided no evidence that the tenant had reported this issue earlier to the former landlord.

Analysis

Section 32 of the Act and Policy Guideline No 1 provide information regarding the obligations of both the landlord and the tenant with respect to a tenancy and the tenanted property.

The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

With respect to maintenance of the rental unit and repairs including remediation of mold, health and housing standards are at issue. I accept the testimony of the landlord that the landlord made efforts to address the tenant’s concerns regarding mold in the rental unit as soon as practicable. The landlord’s testimony is supported by the May 24, 2016 report submitted for this hearing.

The report submitted for this hearing concludes that leaking, water staining and possible mold growth were present on the ceiling of the rental unit near a damaged sliding glass door. The report described the air sample as having a slightly elevated level of mold spores and recommends that the leak be repaired and damaged materials be removed.

When a landlord and tenant enter into a tenancy agreement, written or verbal, each is expected to meet their responsibilities under the Act; a tenant is expected to pay rent; a landlord is expected to provide the premises as agreed to. If a tenant is deprived of the use of all or part of the premises, the tenant may be entitled to damages. In this circumstance, I find that the tenant suffered some inconvenience as a result of the condition of his unit. However, I also find that the tenant’s inconvenience was as a result of his own failure to mitigate. The tenant did not provide sufficient evidence to show that the previous landlord was informed of the mold issue in writing and therefore the current landlord should have been aware of the mold in the tenant’s unit. Further, I accept the testimony of the landlord and his supporting documentary evidence that the tenant delayed the repair and mold remediation in the residence by refusing to let workers into the residence.

I accept the tenant’s testimony that he was incurred out of pocket expenses by a hotel stay while the landlord repaired the rental unit and conducted mold remediation. The tenant did not produce an invoice for his hotel stay. I find the tenant is entitled to be

compensated for his out of pocket expenses for his hotel stay in the amount of a maximum of \$150.00 per night plus any taxes paid. The landlord will pay these expenses on the production of the invoice for the hotel stay by the tenant to the landlord.

The tenant applied for the return of his security deposit. I dismiss this application with leave to reapply.

I find that the repairs required have been completed and therefore I dismiss the tenant's application for an order requiring the landlord to comply with the *Act*, including an order to the landlord to make repairs to the rental unit.

I find that the tenant is entitled to recover his filing fee for this application as he has been partially successful in his claim.

Conclusion

I order the landlord to compensate the tenant for any hotel stay over the course of June 2016 with the provision of receipts for the hotel stay from the tenant to the landlord.

I allow the tenant to deduct \$100.00 from his next month's rent in order to recover the filing fee for this application from the landlord.

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: August 4, 2016

Residential Tenancy Branch