Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, RR

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 under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The tenant named two separate landlords in her application. Specifically the tenant named the previous property management company (the "previous landlord") and the current property management company (the "current landlord"). The tenant, agents from both property management companies, the onsite manager who has maintained his role throughout the tenancy, and the owner of the rental unit attended the hearing. The parties were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that she sent the application via x-press post to each of the landlords. Section 89 of the *Act* establishes that when a tenant serves an application for dispute resolution pertaining to a monetary order it must be served by leaving it directly with the landlord or by registered mail. The previous landlord and current landlord confirmed receipt of the tenant's application for dispute resolution package. Although the tenant did not serve the application in accordance with the *Act*, I find pursuant to section 71 (2)(b) of the *Act*, that the application was sufficiently served to each landlord.

Preliminary Issue - Service of Tenant's Evidence & Adjournment Request

The tenant testified that on October 28, 2016 she forwarded a 74 page evidence package via x-press post to each of the landlords. The tenant provided Canada Post receipts and tracking numbers as proof of service.

Each landlord confirmed receipt of the tenant's 74 page evidence package. However the previous landlord testified that the evidence package was not received until November 2, 2016 which he contends is not in accordance with the *Residential Tenancy Branch, Rules of Procedure* ("*RTB Rules*"). *RTB Rules,* section 3.14 states the respondent and Residential Tenancy Branch must receive the applicant's evidence not less than 14 days before the hearing. The previous landlord argued he did not have sufficient time to review the tenant's evidence and therefore requested an adjournment.

During the hearing I advised the parties the hearing would not be adjourned and my reasons for refusing the request would be provided in my written decision.

As per the Canada Post tracking numbers submitted by the tenant, the packages were delivered to each landlord on November 1, 2016. Based on the Canada Post tracking information and in accordance with section 88 of the *Act*, I find that the previous landlord was served with the evidence package on November 1, 2016. Because the packages were received November 1, 2016 and the hearing was held November 15, 2016, I find the tenant's evidence package was received within the 14 days allotted by the *RTB Rules*. Based on my finding that the evidence package was received in time, I find the landlord had ample opportunity to review the evidence, and it would unfairly prejudice the tenant to reschedule the hearing. Therefore the landlord's request for an adjournment is denied.

Preliminary Issue - Exclusion of Current Landlord

Prior to the hearing the current landlord submitted a letter to the Residential Tenancy Branch requesting to be removed as a party to this dispute. During the hearing the current landlord testified that the tenant's claim is in relation to an issue that occurred in 2014, which is prior to the tenancy agreement signed between the current landlord and the tenant. In an effort to support his position, the current landlord submitted a copy of the current tenancy agreement.

The tenant confirmed her claim is in relation to an issue that occurred between July 8, 2014 and September 3, 2014 under the previous landlord.

Based on the testimony of the parties in which they both agreed the issue occurred prior to the current tenancy, I find the current landlord should not be a party named in this dispute and therefore grant the current landlord's request to be removed as a party.

Preliminary Issue – Clarification of Application

At the outset of the hearing the tenant confirmed that she is not seeking an order for the landlord to make repairs to the unit as all repairs have been made. The tenant clarified that she is not seeking to reduce rent for repairs but rather she is seeking compensation in the form of reduced rent for events that occurred in 2014. Therefore these portions of the tenant's claim are dismissed without leave to reapply. The finding on whether the tenant is entitled to compensation will be addressed in the analysis portion of my decision.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

The parties testified that the current property manager assumed this tenancy in June 2015. The current property manager entered into a new tenancy agreement effective June 1, 2015 on a fixed term until May 31, 2016, at which time the tenancy continued on a month-to-month basis. The parties agreed the tenancy initially started September 1, 2013 and rent in the amount of $725.00 is payable on the first of each month.

On July 8, 2014 the tenant advised the onsite manager that her rental unit contained a water pocket on an outside bedroom wall. The manager, who was scheduled to leave for vacation the following day, inspected the unit and the unit above. It was observed that the unit above had a leaking faucet that may have contributed to the water pocket.

The following day, on July 9, 2014 a handyman attended the unit and removed some drywall revealing what appeared to be mold inside. A remediation company was contacted and attended the rental unit this same day. As a result of the discovery and the possibility of asbestos contamination, the tenant was immediately ordered to vacate. The tenant and her young son were relocated to an adjacent vacant unit.

The leaking faucet in the unit upstairs was deemed to be the cause of mold and was immediately replaced. Testing came back positive for mold and asbestos. Remediation

began July 11, 2014 and the parties estimate the work was completed and the tenant returned to the rental unit sometime between the last week of August and first week of September 2014.

Tenant

It is the tenant's position that her evacuation and subsequent costs associated with the evacuation were the result of the handyman's negligent act of removing drywall and exposing mold and asbestos.

The tenant seeks $12,714.31 in compensation. The tenant concludes that the health issues experienced by her and her son prior to the discovery of the mold, are a result of the mold growth in her rental unit. The tenant testified that because of the immediate evacuation and threat of contamination she had to replace many basic necessities including but not limited to mattresses, stuffed animals and food. The tenant's claim for compensation includes a claim for the loss of quiet enjoyment as she endured stress over the evacuation and was the subject of neighbouring tenants gossip, which prevented her from utilizing the common pool for the duration of the summer. In an effort to support her claim the tenant provided doctors notes, photographs, the remediation site report, a witness statements and some receipts.

Landlord

The landlord acknowledged the tenant was inconvenienced but argued this was in no way a result of landlord negligence. The hole was made in the drywall to determine the extent of the water damage and once the hole revealed what appeared to be mold a remediation company was immediately called in to assess and repair the damage. The landlord ensured the tenant had an alternate residence in an adjacent vacant unit.

The landlord received previous requests for compensation from the tenant but advised her the parties involved were not willing to compensate her. Specifically, the insurance company from the upstairs owner would not compensate, strata would not compensate and lastly the owner of the affected rental unit was not prepared to compensate the tenant. The landlord suggested the tenant sought compensation from the landlord because the tenant did not have tenants insurance.

Analysis

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 this case, the onus is on the tenant 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.

Although the tenant seeks $12,714.31 in compensation, it remains unclear how she arrived at this total. The tenant did not provide a monetary worksheet but rather a handwritten list of items and monetary amounts that do not equate to $12,714.31. Regardless, she is seeking compensation for what she asserts is negligence on the part of the landlord.

Section 32 of the *Act* establishes 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.

While I accept both parties evidence that mold and asbestos were discovered in the rental unit I find that, on a balance of probabilities, the tenant was unable to show that any loss related to the mold and asbestos was the result of landlord negligence. I find it reasonable that drywall would be removed to determine the extent of water damage as neither party provided testimony or documentary evidence of visible mold within the rental unit, which would have alerted the landlord to take precaution. In the absence of evidence establishing the age of the building I cannot determine the landlord knew or ought to have known that the drywall contained asbestos. Further, the evidence shows the cause of the mold was due to the leaking faucet upstairs, which the landlord had no prior knowledge of as this unit is separately owned. I find the landlord fulfilled the landlord's obligation under section 32 by employing a remediation company after the discovery of mold.

Therefore, the tenant's claim fails on the second part of the burden of proof test above. The tenant cannot establish that the damage or loss occurred due to the actions or

neglect of the landlord in violation of the *Act, Regulation* or tenancy agreement. Accordingly, I dismiss the tenant's application for a monetary order of $12,714.31 for damage or loss relating to mold and asbestos in the rental unit, without leave to reapply.

Conclusion

The tenant's application is dismissed in its entirety 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: December 13, 2016

Residential Tenancy Branch