



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP MNDC OLC RP

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*, regulation or tenancy agreement pursuant to section 67;
- an order for emergency repairs to the rental unit pursuant to section 33;
- an order to the landlords to make repairs to the rental unit pursuant to section 33; and
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Only the tenant, N.M. appeared at the hearing. She was given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

The tenant stated that she served the building manager in person with her Tenant's Application for Dispute Resolution ("Tenant's Application") on March 3, 2017. As evidence of her efforts to serve the document, the tenant provided a written letter from a person who witnessed service of the Tenant's Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the Tenant's Application on March 3, 2017.

Issue(s) to be Decided

Is the tenant entitled to a monetary award for damages?

Should the landlord be ordered to make emergency repairs?

Should the landlord be ordered to make repairs to the rental unit?

Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The tenant provided uncontested testimony that the tenancy in question began in November 2015. She stated that the rent is \$475.00 per month and that a security deposit of \$237.50 continues to be held by the landlord.

The tenant explained that she sought a Monetary Order of \$475.00 to reflect the loss she has suffered as a result of a bedroom in the apartment being mouldy and for damage that the mould has done to a clothing dresser. In addition, the tenant requested that the landlord be ordered to make repairs to the rental unit. The tenant said that in December 2016 she began noticing mould growing in her daughter's bedroom.

On December 23, 2016 the tenant contacted the landlord seeking assistance with the mould issue. After speaking to the landlord, she was instructed to clean the mould with bleach and told by the landlord "it would be ok." The tenant informed that she followed these instructions; however, despite at first succeeding at eliminating the mould, it grew back within a few days.

On January 6, 2017 the landlord sent a volunteer to the tenant's apartment with gloves and bleach for the tenant to clean the apartment. The tenant stated that by this point, she was unprepared to deal with the matter on her own as the carpet, window sill and one entire wall were covered in mould.

On January 17, 29 and February 19, 2017 this same volunteer returned to the rental property to attend to this mould issue. The tenant described how a large portion of the wall was cut out and removed from the affected area. Since February 19, 2017 no further action has been taken, the tenant has not been provided with any contact information for this volunteer and she one of her two bedrooms has been left with a large hole in the drywall.

As a result of the mould and work being done in the rental unit, the tenant's daughter has been unable to use her bedroom and now must share a bedroom with the applicant tenant. Furthermore, the tenant explained that her daughter's dresser was consumed by mould and must be replaced.

Analysis – Monetary Order

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/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. In this case, the onus is on the tenant to prove her entitlement to her claim for a monetary award.

Based on the tenant's undisputed evidence, I find that the incidents of mould have resulted in a loss in the value of the tenancy for the tenant. There is undisputed evidence that the rental unit was affected by mould to such an extent that the tenant was unable to occupy one of the bedrooms, forcing her daughter to share a bedroom with her. I find that the tenant has taken steps to make the landlord aware of the issues she has had with the rental unit. While the

landlord has made some efforts to mitigate the damage suffered by the tenant, no concerted work has been undertaken on the landlord's part to deal with the mould issue. Furthermore, the tenant has been left with a hole in her wall where some repairs had been begun but remain unfinished. Under these circumstances, I am issuing a monetary award of \$475.00.

Analysis – Emergency Repairs

Emergency repairs are defined in section 33 of the *Act* as repairs that are urgent and necessary for the health and safety of occupants and the preservation of the property. The *Act* also provides that when emergency repairs are needed, prior to having emergency repairs made the tenant must make at least 2 attempts to telephone the person identified by the landlord as the contact person and provide the landlord reasonable time to make the repairs.

I do not find that the tenant's cleaning of the rental unit to be an emergency repair. The tenant has provided no evidence that the work she undertook was anything more than cleaning and maintenance. The tenant has failed to submit sufficient evidence to show that her cleaning was necessary for the health and safety of the occupants or the preservation of the property. The tenant testified that she only performed the cleaning on one occasion, and explained that the landlord has taken steps to rectify the situation. The tenant's claim for an Order of emergency repairs is dismissed.

Analysis – Repairs

I accept the tenant's undisputed testimony that an Order for repairs should be issued to the landlord. Based on the testimony of the tenant, I determine that a repair order for the following outstanding issues is appropriate.

- a. Complete replacement of the section of missing bedroom wall
- b. Professional cleaning of the carpet in the affected bedroom
- c. Professional cleaning of the walls and window sills in the affected bedroom

I order that the repairs be completed by April 30, 2017.

Analysis – Order to Comply with the Act

The tenant testified that she wished for the landlord to comply with the *Act* by ensuring that she was provided with a rental unit which was fit for occupancy. By the tenant's own admissions, the landlord has begun taking some steps to rectify the situation concerning mould in her daughter's bedroom. Little evidence was presented at the hearing that the landlord is failing to comply with the *Act* or ignoring the tenant's requests. The tenant's application for an Order to comply with the *Act* pursuant to section 62 is therefore dismissed.

Conclusion

The tenant's application for compensation for emergency repairs is dismissed.

The tenant's application for an Order for the landlord to comply with the *Act* is dismissed.

I issue a one-time monetary Order in the amount of \$475.00. As this tenancy is continuing, I allow the tenant to recover this award by withholding a future monthly rent payment on **one** occasion. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$475.00.

The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

I order that the landlord complete the following repairs by April 30, 2017.

- a. Complete replacement of the section of missing bedroom wall
- b. Professional cleaning of the carpet in the affected bedroom
- c. Professional cleaning of the walls and window sills in the affected bedroom.

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 30, 2017

Residential Tenancy Branch