



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, RP, RR, OLC, PSF, FF

Introduction

On March 1, 2017, the Tenants applied for dispute resolution seeking the following:

- an order to make emergency repairs to the rental unit;
- for an order that the Landlord make repairs to the rental unit;
- for an order that the Landlord to comply with the *Residential Tenancy Act (the Act)*, regulations, or tenancy agreement;
- for an order that the Landlord provide services or facilities required by law;
- to allow the Tenant to deduct the cost of repairs, services or facilities from the rent, and
- to recover the cost of the filing fee

The matter was scheduled for a teleconference hearing. Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants testified that they received a copy of the Landlord's evidence two days prior to the hearing. The Tenants submitted that they have had an opportunity to consider the Landlord's evidence and wanted to proceed with the hearing. The Tenants declined an opportunity for an adjournment to give them more time to consider and respond to the Landlord's evidence.

The Tenants clarified what they are seeking in their Application. The submitted that they are seeking an order guaranteeing their tenancy and their rent at a fixed amount for 15 - 20 years.

Section 43 of the Act allows a Landlord to increase the rent in accordance with the regulations. The Tenants' request is contrary to the Legislation and there is no authority under the Act, for me to consider or the request. The Tenants' request is dismissed.

The hearing proceeded to consider the Tenants' other issues related to a repair order.

Issues to be Decided

- Are the Tenants entitled to an order for the Landlord to make repairs and/or emergency repairs to the unit?
- Is the Tenant entitled to compensation for damage or loss?
- Is the Tenant entitled to deduct the cost of repairs, services or facilities from the rent?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The rental unit is a 60 unit apartment building built in the 1970's. The parties testified that the tenancy began on December 1, 1998, and is currently a month to month tenancy. Rent in the amount of \$927.00 is due on the first day of each month. The Tenants paid a security deposit of \$290.00 to the Landlord.

The Tenants submitted they want the Landlord to remediate the walls due to the presence of mould. They submitted that in 2012, there was a water leak from a heat register and there is a problem behind the wall. They submitted that they contacted the Landlord in 2013, and 2014, and asked the Landlord to deal with the mould issue. They submit that mould may present a health risk. The Tenants did not provide any documentation regarding their requests to the Landlord. The Tenants provided black and white pictures of a bedroom wall that appears to show mould growth. The Tenants submitted that they cleaned the area with bleach and a couple weeks later the mould came back.

The Tenants submitted that in 2016, they discovered a water leak from a neighbour's unit that affected their unit. They submitted that they contacted the Landlord who attended the unit and sent someone to remediate three days later. The Tenants submit

that there is now mould growing where the water entered and the Tenants want the Landlord to repair the linoleum and carpet. The Tenants stated that the transition between the linoleum and carpet has evidence of mould. The Tenants provided black and white pictures of a hole in linoleum and a soiled/ discolored carpet.

The Tenants submitted that the toilet in the bathroom is sweating and causing moisture on the floor. The Landlord brought someone in to look but did not replace the tank with one that has a liner. The Tenants submitted that there is mould in the bathroom, and there is no bathroom fan for ventilation. They submitted that they keep the bathroom door open to help with ventilation and they keep the overhead heat lamp on. The Tenants clarified that they are not saying the Landlord is responsible for the mould in the bathroom.

In response, the Landlord testified that he has no recollection of an issue where water leaked from a heat register pipe. The Landlord testified that the Tenants have not contacted him to discuss a problem with the bedroom wall and the presence of mould.

The Landlord testified that there was a water leak from a pipe in a neighbor's unit, in 2016, and it was taken care of. The Landlord testified that a carpet cleaner was brought in and the Tenant's living room and hall carpet was cleaned. The Landlord submitted that the Tenants have never mentioned the transition area.

The Landlord testified that the Tenant asked the Landlord to clean the carpet for the entire suite and the Landlord declined.

The Landlord testified that the hole in the linoleum is from normal wear and tear and is not related to any flooding.

The Landlord submitted that they had a professional plumber attend and replace the contents within the toilet tank. He submitted that most toilet tanks sweat. He submitted that the Tenant asked him to replace the toilet tank and he declined to do so.

The Landlord testified that the Tenant are responsible to regularly clean and maintain the bathroom to prevent mould.

The Landlord submitted that they perform regular repairs when its required, but it is the responsibility of Tenants to clean. The Landlord submitted that they cannot be responsible for cleaning Tenants suites.

The Tenants submitted that that they perform regular cleaning but mould growth on walls is different from the requirement for regular cleaning.

Analysis

Section 32 of the Act states that 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.*

Section 33 of the Act states that “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.
- (3) A tenant may have emergency repairs made only when all of the following conditions are met:
- (a) emergency repairs are needed;
 - (b) 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;
 - (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

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

The Tenant’s application includes a request for a rent reduction, and an order for the Landlord to provide services and facilities required by law. The Tenants did not indicate any amount of compensation within the application. In addition, the Tenants did not address the request for a rent reduction in their testimony. The Tenants provided insufficient evidence that they have suffered a loss of use, or a loss of a service or facility of the rental unit. I find that the Tenants did not suffer a loss of use of the rental unit, and I dismiss the claim for a rent reduction.

The Tenants did not provide sufficient evidence to establish that emergency repairs pursuant to section 33 of the Act are urgent, or necessary for health and safety reasons. The Tenants suggested that mould could be a health risk, but here was no evidence to support the actual presence of toxic mould. The Tenant's request for an emergency repair is dismissed.

The parties provided conflicting testimony regarding the bedroom wall. The Tenants' submitted they notified the Landlord, and the Landlord submitted that he was not notified. The Tenants' have provided pictures that appear to show spots of mould on the wall.

I accept the Tenants' testimony that they tried to deal with the mould problem and the mould returned. There is insufficient evidence from the Tenants to establish that the Landlord was previously aware of this problem. The Landlord is now aware of the issue. I order the Landlord to investigate the reported mould problem in the bedroom and to take steps to remediate any problem found.

I order the Landlord to investigate the bedroom wall within two weeks of receiving this decision. If the Landlord fails to investigate the problem and fails to take steps to remediate any problem found within a reasonable amount of time, the Tenants may reapply for dispute resolution and seek compensation.

I find that the Tenants are expected to keep the bathroom clean, and that the Landlord is not responsible for the cleaning of the bathroom. There is no evidence of a water leak in the bathroom. The Landlord is not required to replace the Tenant's toilet tank with a newer model.

Residential Tenancy Policy Guideline #1 Responsibility for Residential Premises states that Tenants are responsible for periodic cleaning of carpets to maintain reasonable standards of cleanliness. I find that the Landlord cleaned the carpet after the water leak and was not required to clean the carpets in the areas of the rental unit that were not affected by the flooding. There is insufficient evidence from the Tenants showing mould on a transition strip. The Tenants' request for the Landlord to clean or repair the carpet is dismissed.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful with the application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution.

I authorize the Tenant to deduct the amount of \$100.00 from one (1) future rent payment.

Conclusion

The Tenants' application was partially successful. I order the Landlord to investigate the bedroom wall to determine the presence and origin of mould within two weeks of receiving this decision. The Landlord is ordered to make any necessary repairs to the bedroom wall.

The Tenant may reapply for dispute resolution seeking compensation if the Landlord fails to comply with my order.

I grant the Tenant the amount of \$100.00. I authorize the Tenant to deduct the amount of \$100 from one (1) future rent payment.

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 28, 2017

Residential Tenancy Branch