



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DUNSMUIR COURT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, ERP, RP, RR

Introduction

This hearing dealt with a tenant's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "*Act*") for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order for the landlord to comply with the *Act*, regulations or the tenancy agreement;
- an order for the landlord to make emergency repairs;
- an order for the landlord to make repairs; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

The landlord's agent H.T., the landlord B.R and a co-owner A.T. appeared at the teleconference hearing and appeared as agents for the corporate landlord (collectively the "landlords"). The landlords appeared with a witness G.M. The tenant appeared at the teleconference hearing with an advocate along with a witness M.M. The landlords, tenant and witnesses gave affirmed testimony. During the hearing the landlords and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

Preliminary and Procedural Matters

Landlord B.R. provided the correct spelling of his last name which is different than the spelling on the tenant's application. Accordingly, I amend the tenant's application to reflect the correct spelling of the landlord's last name which is shown in the style of cause.

The tenant indicated that there was no further need for an order that the landlord complete emergency repairs. Therefore, I dismiss this claim.

The landlord withdrew their application at the previous hearing held on April 3, 2017 which is recorded in the Interim Decision.

Issues to be Decided

- Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the tenant entitled to an order for the landlord to comply with the *Act*, regulations or the tenancy agreement?
- Is the tenant entitled to an order for the landlord to make emergency repairs?
- Is the tenant entitled to an order for the landlord to make repairs?
- Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The undisputed evidence established that the tenant entered into a fixed term tenancy starting on February 15, 2015 and ending on January 31, 2016. Rent in the amount of \$830.00 is due on the first day of each month. The tenant paid a security deposit in the amount of \$415.00.

The tenant moved from another unit rented by the same landlord into a larger newly renovated unit. The tenant's application arose out of a need for repairs to the bathroom and concerns about mold that the tenant testified was impacting her health. The tenant testified that she concluded that there was a mold problem when the linoleum cracked in June 2016. The tenant testified that there had been a discussion about the mold in the bathroom at the time of move in, however, the tenant testified that she didn't realize how severe the problem was until June 2016.

The tenant testified that the mold in the bathroom was impacting her health which grew worse over time leading to headaches, bloating, difficulty breathing, and nausea. The tenant complained that the mold problem was so extensive that she and her daughter struggled with various ailments that they attributed to exposure to mold. The tenant submitted a letter from a physician dated June 29, 2016 describing the tenant's medical ailments which the doctor states is considerably worsened by having mold in her bathroom. The tenant submitted another letter dated January 12, 2017 from a physician

describing ailments that have persisted despite treatment attributing the cause to the worsening of mold in the tenant's bathroom.

The tenant sent a letter to landlord B.K. and witness G.M. on January 16, 2017 informing the landlords that there has been a mold problem since moving into the unit. The tenant describes the impact that the mold is having on her health in the letter.

The tenant is seeking compensation in the amount of 25% of the rent paid for 10 months since June 2016, for a total of \$2,075.00. The tenant is seeking the 25% reduction from the time the tenant says she first notified the landlords of the mold issue in June 2016 until the landlords rectify the mold issue in accordance with section 32(1) of the *Act*. The tenant testified that she had verbally reported the mold problem to the landlords since June 2016. The landlords denied the tenant's claims that the tenant had complained to the landlord verbally about the mold since June 2016.

The landlords testified that they weren't notified of the condition of the bathroom until the tenant's letter dated January 16, 2017. The landlords testified that arrangements were made to view the bathroom shortly thereafter and the repairs were completed by mid-March. The landlords argued that the delay since June 2016 has been as a result of the tenant not informing the landlords of the problem until January 16, 2017.

Furthermore, the landlords argued that once having been notified of the problem, the landlords addressed it in a timely fashion. The landlords also testified that the tenant did not provide any medical letters to the landlords and that they first learned of the tenant's health complaints in the letter dated January 16, 2017.

The tenant testified that the repairs have since been done, however, the tenant is not satisfied that the repairs have adequately addressed the mold in the walls and behind the tiles. The tenant submitted photographs of the bathroom before the repairs and during the repairs. The tenant's witness M.M. gave his opinion that the repairs were not sufficient to remediate the mold. Witness M.M. had experience in the field of restoration and remediation. The witness acknowledged that he did not observe the work as it was being completed and is solely relying upon the photos.

Further photographs were submitted as to the condition of the bathroom after the repairs. The landlords testified that the proper steps were taken to remediate the mold and relied on the photographs to support their testimony. The landlords' witness G.M. who was involved in doing the repairs testified that the work was adequate and proper steps were taken to remediate the mold.

The tenant is also relying upon the loss of use of the bathroom while it underwent repairs as the basis for compensation under section 67 of the *Act*. The tenant testified that although the work started on the bathroom on February 6, 2017, the repairs weren't complete and the bathroom was left in a worse condition by the mold being exposed. The tenant testified that the smell caused her to avoid using the toilet and the condition of the bathroom during the repairs made it impossible to use the shower and bathtub. The tenant testified that she and her daughter had to relocate their sleeping quarters to a different location in the house to avoid exposure to the mold.

The parties blame each other for the delay in completing the repairs between February 6, 2017 and mid-March 2017. The landlords testified that the tenant insisted on a new contractor which stopped the work while the landlords found another. The landlords testified that they attempted to contact the contractors that the tenant preferred to no avail. The tenant argued that the landlords are responsible for the delay and the condition of the bathroom when the work stopped. The tenant acknowledged initiating the change of contractors.

Analysis

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

Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy

agreement on the part of the landlords. Once that has been established, the tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the tenant did what was reasonable to minimize the damage or losses that were incurred.

The landlords and tenant gave different opinions as to whether or not there was an ongoing mold problem in the tenant's bathroom that requires further remediation. Each witness for the landlords and tenant gave an opposing opinion as to the adequacy of the repairs to remove the mold. Based upon the evidence before me, I find that there is insufficient evidence to determine which party is correct in their assessment of the situation as the evidence is equally compelling to support both versions.

Without being able to determine which party is correct in their assessment, I find that there is insufficient evidence to satisfy me that there are emergency repairs required or other repairs. As a result, I find that there is insufficient evidence to satisfy me that the tenant is entitled to a rent reduction until such time as repairs are completed when it is impossible to conclude whether any further remediation is necessary. Therefore, I dismiss this claim.

Similarly, I find that there is insufficient evidence to satisfy me that the tenant is entitled to an order for the landlord to comply with the *Act*, regulations or the tenancy agreement. In making this finding, I have taken into consideration the fact that there is insufficient evidence that the landlords are breaching the *Act*, regulations or tenancy agreement, particularly when there is insufficient evidence as to whether or not there is an ongoing mold problem. Therefore, I dismiss this claim.

With respect to the tenant's claim for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, I find that there is insufficient evidence to establish a causal link between the tenant's health and the mold seen in the photographs that was revealed during the repairs. I find that the letters from the physicians are not sufficient to corroborate the tenant's claims that the mold in the bathroom caused her deteriorating health, particularly, as there is insufficient evidence as to the basis for the physicians' conclusions. As a result, I find that there is insufficient evidence that the tenant's deteriorating health stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord.

I do, however, find that there is sufficient evidence to satisfy me that the repairs to the bathroom caused the tenant discomfort and inconvenience. Based upon the undisputed evidence, I find that there is sufficient evidence to support a finding that the tenant's request to change the contractor contributed to the delay.

I find that there is insufficient evidence for me to determine when the landlord was first notified about the mold problem as the testimony provided by both parties was equally compelling. I find that there is sufficient evidence to satisfy me that the landlord knew of the mold problem after receiving the tenant's letter dated January 16, 2017.

In considering the timeline for repairs since January 16, 2017, a period of approximately six weeks to complete the extensive repairs does not seem unreasonable, particularly given that it is attributable to trying to accommodate the tenant's requests for a new contractor. Therefore, I find that there is insufficient evidence to satisfy me that the damage or loss stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord.

Based upon the foregoing, I dismiss the tenant's application.

Conclusion

The tenant's application is dismissed.

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: June 12, 2017

Residential Tenancy Branch