



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FF MNDC O OLC RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the Act") for: cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49; an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62; an order that the landlord make repairs to the rental unit pursuant to section 33; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended this hearing. Both parties (Tenant LR for both tenants and the landlord) 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 tenant testified that she and her family will vacate the rental unit by June 1, 2017. She withdrew her application to cancel the landlord's 2 Month Notice as well as her application that the landlord make repairs to the rental unit. As part of the monetary order requested by the tenant, she sought to apply under section 51 of the Act: that the landlord has not used the rental unit as indicated on his 2 Month Notice however this application is premature as the tenant has not yet vacated the rental unit. I dismiss this portion of the tenant's application.

Issue(s) to be Decided

Are the tenants entitled to a monetary order for loss of quiet enjoyment, incomplete repairs and damage to their property?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began in April 2014 as a fixed term tenancy with a rental amount of \$1900.00 payable on the first of each month. The landlord continues to hold a \$950.00 security deposit paid at the outset of this tenancy. The tenant testified that she and her family will vacate the

rental unit on June 1, 2017. The tenant has applied for compensation from the landlord as a result of water leaks and mold in the rental unit that affected their tenancy and forced the tenants to vacate the unit.

The tenant testified that she and her husband have a 6 year old child. She testified that, in the last several months, the child's bedroom has been subject to a significant water leak. Furthermore, she testified that her family was subjected to mold in the rental unit. The tenant submitted that the landlord did not take sufficient steps to address these problems in a timely manner.

The tenant described a leak that started in her child's room in February 2017. She described a substantial water leak with disgusting brown, murky water entering the room. She testified that the landlord dispatched roofers to find the source of the leak. Both parties agreed that, while the roofers did not identify the source of the leak, the roofers advised that there was mold in the attic (which is accessed from inside the rental unit). The tenant testified that, over the past several months, she has hosted a variety of contractors in her residence and that the landlord has not even attended personally to view the leak damage in the unit. She submitted that she believes repairs were not done by the landlord because the property was in the process of being sold.

The tenant testified that, before and after the unit's mold investigation, she had become very concerned about the air quality in the rental unit. The tenant testified that, the more verbal inquiries she made to the landlord, the less information he seemed to provide. The tenant testified that she suggested a private mediation process to the landlord. Both parties agreed that the mediation was not successful.

The tenant wrote to the landlord by email on approximately 7 occasions as follows,

1. February 24: advise of leak and request repairs and mold inspection;
2. February 27: follow-up email re: repairs and mold inspection;
3. March 2: request for comprehensive mold inspection;
4. March 4: request update and detailed information on repairs to be done;
5. March 15 & 20: suggest private mediation to landlord;
6. March 21: request details of mold inspection report as well as repairs.

The landlord and his wife responded in a limited manner to the email requests of the tenants. On February 28, 2017, the landlord wrote, "call you tomorrow". On March 27, 2017, the landlord wrote to the tenant to say he had provided a 2 Month Notice to End the Tenancy for Landlord's Use and on March 31, 2017. The landlord sent messages requesting the tenants' receipt of the 2 Month Notice. The landlord's wife also wrote, on March 31, 2017, that they would not compensate the tenants by way of a rent reduction for the repair issues within the rental unit.

The landlord testified that, after he received the call about the water leak, as well as other following issues, he always attempted to resolve things quickly and easily. He described what he believes the issue is that led to the water leak. He also confirmed that mold was discovered

by the roofers. He testified that, very shortly after the mold had been discovered, the strata management took over in terms of examining the need for mold remediation. He testified that he did his best to be responsive and available to the tenants but some things were beyond his control because of the strata involvement.

The landlord also provided undisputed testimony that the tenant would not allow him or the contractors into the rental unit to open and access the attic (where the mold was located). The tenant acknowledged that she did not wish to have the attic inspected while she was residing in the rental unit. The landlord argued that the tenants should not be entitled to any compensation (rent reduction) for loss of enjoyment or use of the rental unit because of their delaying the repair process and because the inspection report stated there was no black mold. The landlord stated that the tenants' health was not in jeopardy.

Photographs were submitted into evidence from both parties that show small leaks or rust around windows as well as a cloth to restrict leak in the child's bedroom as well as the tarped roof. The landlord submitted correspondence to the strata requesting action and updates from the strata. With respect to the mold in the rental unit; a copy of mold assessment report dated February 17, 2017 described heavy mold growth and water dripping in some areas. The report identified long term condensation and lack of ventilation increasing the humidity and condensation and creating conditions for mold. When the inspection was done, the inspector identified mold on a closet wall and chair in closet. The mold investigation report included an indication that the attic tested negative for the concerning "black mold". The types of mold found can result in allergic reactions.

Analysis

The tenant testified that her family will vacate the rental unit on June 1, 2017. She sought compensation from the landlord as a result of water leaks in her child's bedroom and mold in the rental unit that impacted the tenants and ultimately forced their decision to vacate the rental unit they had lived in since 2014. In an email to the landlords, the tenant describes the impact to their tenancy since February 2017 as: water ingress in master and secondary windows, leaking roof resulting in current tarp cover, mold discovery in attic and water damage to ceiling.

With respect to the water leak, the landlord did not dispute the existence of a leak. The landlord stated that he believed he knew where the water leak was coming from and that the water leaking had subsided since the weather had warmed. I accept the testimony of the tenant with respect to the impact of the leak on her family: her daughter had to be moved out of her room, the tenant had to attempt to clean up and restrict the leak and the leaking water damaged a bed frame.

With respect to the mold in the attic of the rental unit, the landlord did not dispute the existence of mold in the attic. Roofers discovered the damage and reported it to the landlord. An expert report was created to confirm that there was mold in the attic as a result of long term build up

and a lack of ventilation thereby increasing the humidity and condensation. The report identified “significant mold growth in attic”. The landlord emphasized that the mold investigation report states that the attic tested negative for the concerning “black mold”. According to the report, the types of mold found in the rental unit attic can result in allergic reactions. I accept the tenant’s testimony that she experienced a great deal of worry with respect to the mold in the attic: she was worried for the health of her family as a result of the air quality in the unit as well as her property (particularly the items stored in the attic). The Landlord indicated that he has and will continue to put as much pressure on the strata as possible to address this issue as it has been determined that this repair is within the jurisdiction of the strata.

On more than one occasion, the tenant refused to allow contractors into the rental unit. These refusals and requests for very detailed information delayed the repair work and added to her discomfort. On the other hand, on more than one occasion, the landlord’s emails put off response (ex: “I will call tomorrow”) or were dismissive in tone (ex: “working on it”). In March 2017, the tenant requests inspections and repairs and suggests mediation.

The landlord frequently referred to his conversations with strata and their restriction of his activities in relation to repairing the rental unit and remediating the attic in particular. Residential Tenancy Policy Guideline No. 21 address the duty to repair at strata properties. It states that “owners could be made responsible for repairs on common property which has been allocated for their exclusive use, or where the use has been limited to one or more strata lot owners”.

The dividing line between the strata lot and the common areas is usually the mid-point of the exterior walls of the strata lot...The owner or lessor is required to ensure that the strata corporation is aware of the problem and take reasonable steps to ensure that the repair is made in a timely manner. Generally, repairs to the interior of the strata lot are the responsibility of the owner or lessor. Where the strata corporation may be liable for the cost of the repair, the landlord may make a claim against the strata corporation in the appropriate forum.

When a rental unit is within a strata property, the landlord is duty bound to ensure that the strata is aware of the problem (leaks and mold in this case). The landlord must also take reasonable steps to ensure the necessary repairs were made in a timely manner. I find that the landlord responded to the tenants in a reasonable amount of time. The landlord met the applicable standard without going above and beyond.

Under section 28 of the *Residential Tenancy Act* (“Act”) a tenant may be entitled to quiet enjoyment, including, but not limited to the rights to: freedom from unreasonable disturbance. Regardless of any health hazard, the tenant was inconvenienced when the leak(s) occurred and often short and (late) timing of their responses. However “[temporary] discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment. In determining whether a breach of quiet

enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it." (PG No. 6) As stated above, I find that the tenant has **not** shown a significant loss of quiet enjoyment.

I find that the tenant did not allow the contractors to proceed with their work at the first available opportunity and thereby minimize any damage to her property (chair, items in closet, bedroom, etc.). Therefore, I find that the tenant is **not** entitled to recover for damage to property.

I note that Policy Guideline No. 21 provides that, "Even though the defect may originate outside of the strata lot, if the tenant's use and enjoyment of the premises is adversely affected by a problem originating in the common areas, the tenant may be awarded an abatement of rent or damages." While the attic is common property and therefore the property and obligation of the strata for repair, and while the strata prohibits storage in the attic, I find that the initial leak and discovery of mold resulted in some loss of use of a portion of the rental unit (particularly bedroom and closet in one room as well as the attic).

If a tenant is deprived of the use of all or part of the premises, or when the tenant's right to quiet enjoyment has been impacted, the tenant may be entitled to damages. The types of damages an arbitrator may award are; out of pocket expenditures if proved at the hearing in accordance with section 67 of the *Act*; an amount reflecting a general loss where it is not possible to place an actual value on the loss; "nominal damages" where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right; and finally aggravated damages for significant infractions by the landlord to the tenant.

I rely on Policy Guideline No. 21 in finding that the landlord should be responsible for some loss of use of the rental unit in the circumstances and time period surrounding the initial leak and the mold discovery. Therefore, I find that the tenants are entitled to a monetary order in the amount of \$400.00.

As the tenants will vacate the residence, I dismiss the application for the landlord to comply with the *Act*.

As the tenants were partly successful, I find that the tenants are entitled to recover the filing fee for this application from the landlord.

I dismiss the tenant's application for compensation pursuant to section 51: if the landlord fails to use the property in accordance with the terms of the 2 Month Notice to End Tenancy with leave to reapply given that the application was premature.

Conclusion

I dismiss the application for the landlord to comply with the Act.

I grant the tenants a monetary order as follows,

| Item | Amount |
|---|-----------------|
| Nominal Damage Award to the Tenant | \$400.00 |
| Recovery of Filing Fee for this Application | 100.00 |
| Total Monetary Order | \$500.00 |

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 15, 2017

Residential Tenancy Branch