



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, MNSD, O, FF (Landlord's Application)
CNC, FF, LRE, OLC, FSF, RP, ERP, MNDC, RR (Tenants'
Applications)

Introduction

This hearing convened as a result of cross applications.

In the Tenants' Application for Dispute Resolution filed July 9, 2017 they sought the following relief:

- an Order canceling a 1 Month Notice to End Tenancy for Cause issued on *;
- an Order that the Landlord:
 - comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, the tenancy agreement;
 - make repairs to the rental unit;
 - provide services or facilities required by law;
 - be restricted from entering the rental unit;
- recovery of the filing fee.

The Tenants filed a second application on June 12, 2017 seeking the following orders;

- monetary compensation from the Landlord;
- an Order permitting the Tenant to deduct the cost of repairs, services or facilities from the rent;
- an Order that the Landlord:
 - make repairs, emergency and otherwise;
 - a 1 Month Notice to End Tenancy for Cause issued on *,
- recovery of the filing fee.

In the Landlord's Application filed July 19, 2017 the Landlord's sought an Order of Possession based on the Notice, authority to retain the Tenants' security deposit, recovery of the filing fee and other unspecified relief.

The hearing was conducted by teleconference on August 9, 2017. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

As noted above, three separate applications were before me. Although only an hour of hearing time was scheduled for this matter, I allowed the hearing to go on for two hours. It was clear from the issues before me, the voluminous documentary and digital evidence filed, as well as the conduct of the parties, that it would not be possible to address all issues raised by the parties.

Residential Tenancy Branch Rule of Procedure 2.3 provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

While the claims made by the parties all relate to the tenancy, it is my determination that the priority claims before me related to the Notice and whether this tenancy would continue. I also indicated that should the tenancy continue I would address the Tenants claim for emergency repairs.

I therefore dismiss the parties' other claims with leave to reapply.

Issues to be Decided

1. Should the Notice be cancelled?
2. Should the Landlord be ordered to make emergency repairs?

Background and Evidence

J.Z. testified on behalf of the Landlord and stated that while the tenancy agreement provided that this one year fixed term tenancy was to begin May 15, 2017, the tenancy began on May 9, 2017 when the Tenants moved into the rental unit. J.Z. stated that the parties agreed the Tenants would maintain the property and do minor repairs and moved in early to clean and paint the rental unit.

Introduced in evidence was a copy of the 1 Month Notice to End Tenancy for Cause issued July 6, 2017. The reasons cited on the Notice were that the Tenants have:

- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk; and,
- engaged in illegal activity that has or is likely to jeopardize the lawful right or interest of another occupant or the landlord.

Also introduced in evidence was a copy of the proof of service indicating the Notice was attached to the door on July 6, 2017.

J.Z. testified that on May 14, 2017 the Tenants emailed the Landlord alleging there was "toxic black mould" in the rental unit. At that time the Landlord offered the Tenants the opportunity to move out if they were not happy with the condition of the rental unit as this was the day before the tenancy was to begin according to the rental agreement.

J.Z. stated that since May 16, 2017 the Landlord has attempted to address the mould issue. She stated that on June 3, 2017 the Landlord attempted to have her worker, A.L., attend the rental unit and address the mould issue. J.Z. stated that she posted a notice of entry and the Tenants refused entry to A.L. J.Z. stated that the Tenant, M.H., came out and yelled at the A.L., chased him away and prevented him from doing the repair work.

On June 30, 2017 the Landlord issued a caution notice to the Tenant regarding the June 3, 2017 incident.

The Landlord then served the Tenants a Notice of Entry on June 19, 2017 for entry on June 24, 2017 to conduct mould testing and a monthly inspection.

On that date, June 24, 2017, the Landlord attended the property, took mould samples and photos of the rental unit. J.Z. testified that the mould samples were sent to a third party for testing. J.Z. stated that they used a soft vacuum method and a swab method and both samples came back indicating there was no toxic mould. J.Z. stated that the mould in the bathroom is very common. She further stated that the report advised that professional remediation was not required and that the moisture and mould could be removed with bleach as well as ensuring excess water is removed.

At pages 18-33 of their evidence the Landlord provided copies of the two reports from the two samples taken. These reports indicate the mould was common and not black mould as alleged by the Tenants.

J.Z. stated that after they got the results back from the lab and checked with mould remediators and checked with various government sources regarding mould treatment, the Landlord discovered that the mould could be dealt with by cleaning with bleach. On June 30, 2017 the Landlord served the Tenant Notice of Entry for July 6, 2017. A copy of this Notice was provided in evidence.

J.Z. stated that on July 6, 2017 the Landlord, A.L., and A.B. attended on July 6, 2017 to address the mould issue. She stated that again the Tenants refused the Landlord an opportunity to address the mould.

A.B. also testified on behalf of the Landlord as follows:

A.B. confirmed he is a non-practising lawyer and friend of the Landlord. He stated that when he attended the residence on July 6, 2017 they were met by the Tenant L.H. A.B. stated that he explained to the Tenant that they were there to address the mould and confirmed the test results that there was no black/toxic mould. A.B. stated that he informed L.H. that their intention was to wash and bleach the surfaces, paint the ceiling in the bathroom, and clean and repair where the wall meets the linoleum.

A.B. further stated that the Tenants also asked for some caulking in the kitchen and bathroom and they informed L.H. that they intended to address this repair as well.

A.B. stated that as they began to walk in the door, L.H., stated that they were not allowed to fix the bathroom. A.B. responded that they had done the tests, had the results back and were there to address it. A.B. said that L.H. said that he was not going to allow the Landlord to do the work as he was getting tests done himself as he was not satisfied with the Landlord's mould testing.

A.B. stated that they did not want to get into an altercation with L.H. He stated that the Landlord's daughter arrived shortly thereafter with smoke detectors which were to be installed that day. He stated that once she arrived he gave the smoke detectors to L.H. who agreed he would install them himself.

In reply to the Landlord's submissions, the Tenants testified as follows.

The Tenant, M.H., stated that the Landlord did not give a Notice of Entry for the June 3, 2016 date, although she did provide text messages. M.H. stated that she did not deny entry, rather she allowed entry for the worker but stopped him when he began doing work which she believed was unsafe, namely scraping the ceiling.

The Tenant, M.H., stated that the Landlord and A.L. returned and she allowed them into the residence and continued making breakfast for her son while they went into the bathroom. M.H. stated she had been told by a professional cleaner and renovator, A.S. that the bathroom needed to be sealed properly before the mould was removed so as to prevent any spores from entering the air. She stated that when she left the room she then heard scraping of the bathroom. She stated that she was concerned because of the possible disruption of the mould as well as concerns she had with possible asbestos because the house was built in the 1970's.

The Tenants testified that on July 6, 2017 they again allowed entry into the home despite the Landlord's testimony otherwise. They confirmed, however, that they refused to allow the Landlord to scrape the ceiling as they had just that morning been informed that by, J.R. (a manager of a provincial mould inspection company) that the mould was a major problem and required more comprehensive remediation. While they did not have a copy of his report, they confirm he gave them this information verbally before the Landlord arrived. A copy of the report from J.R. was received later that day and was provided in evidence. He writes that he inspected the property on July 6, 2017 and found that the mould is a "major problem" which will require a professional mould remediation as per Canadian Construction Association level 2 Safety protocols.

M.H. further stated that the Landlord was told to by R.M., who is a project manager for a cleaning company, and whom the Landlord hired to give her a quote to address the work, that the bathroom required extensive work to address the mould issue. M.H. provided a copy of the quote from R.M. in evidence, which was given to the Landlord on May 29, 2017 and was for \$4,000.00.

Also submitted in evidence was a text message from R.H. wherein he writes that “to properly deal with this we need to remove the vinyl flooring, and some of the drywall”. In this text message exchange, the Landlord asked if the mould could be removed without changing the vinyl or drywall and in response R.H. told the Landlord that they still needed to do an asbestos sample. The Tenant submitted an email from R.H. wherein he confirmed he had to cut ties with the Landlord as she was not willing to do the work which was necessary.

The Tenant stated that she is requesting that the Landlord hire a certified mould remediation company to address the mould issue and use proper procedure.

The Tenant stated that she does not wish to move as her son is established in his school and has daycare set up.

The Tenant stated that the Landlord refused to give the Tenants a copy of the mould inspection reports until they received the evidence package. In evidence submitted by the Tenants was a word document purporting to contain all the email communication between the parties. This document shows that on May 30, 2017 the Tenants specifically asked for a copy of the mould inspection report.

In reply, J.Z. stated as follows. She stated that the cleaner referenced by the Tenant, R.H., was never at the property. She stated that he sent a contractor who had no mould expertise and she believes he gave a quote based on photos and recommended \$5,000.00 of work on a bathroom of less than 10 metres square feet.

J.Z. also stated that they believe they sent the Tenant a copy of the mould inspection prior to the issuance of the Notice and “would have done so by email”. The Landlord confirmed that all communication between the parties was submitted in evidence.

Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities, I find as follows.

The parties submitted substantial documentary and digital evidence including all email communication between them, videos of interactions, photos of the rental unit, communication with various professionals and copies of mould inspection reports. After a review of this evidence, I find that the evidence supports a finding that the Tenants

refused the Landlord's attempts to repair and maintain the property *as they were genuinely concerned the Landlord's actions would create a health issue.*

The evidence submitted by the Tenants from mould experts and professional cleaners suggests the mould was far more problematic than communicated by the Landlord at the hearing.

The evidence also confirms the Tenants requested a copy of the Landlord's mould inspection report. During the hearing J.Z. stated that the report "would have been sent to the Tenants by email"; however, a review of the emails sent between the parties confirms that the report was not sent to the Tenants.

It is possible that, if the professionals retained by the Tenants had the benefit of the Landlord's reports, they may have agreed with the Landlord's remedial work. It is also possible they may not of. The simple fact is that the Landlord did not convey this crucial information to the Tenants in a reasonable manner; telling the Tenants the mould was not black mould and could be cleaned by bleach and repainting, is not sufficient considering the information the Tenants had also received.

The evidence confirms that on July 6, 2017 the Tenants had J.R, a professional mould specialist, attend the rental unit. He communicated that the mould was a "major problem", and that the areas should not be scraped as this may disrupt the mould spores and possibly asbestos. Shortly thereafter the Landlord attended to address the mould issue and indicated they intended to do the work which the Tenants had just been informed was unsafe. Again, it is unknown whether the information would have been different had the Tenants' expert had the benefit of the Landlord's report. In any case, I find their response, to refuse the Landlord the ability to scrape and paint over the mould, to be reasonable.

I therefore find the Landlord has failed to prove the Notice. The tenancy shall continue in accordance with the *Act*.

Conclusion

The Tenants' application to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenants are entitled to recovery of their filing fee in the amount of \$100.00. Although they filed two separate applications, they could have amended the first. They

are permitted to reduce their next months' rent by \$100.00 are recovery of the \$100.00 fee.

Pursuant to sections 32, 33 and 62(3) of the *Residential Tenancy Act*, I Order as follows:

1. By no later than September 1, 2017, the Landlord shall retain the services of a certified professional mould remediation company to assess and address the mould issues in the rental unit. The Landlord shall provide copies of their mould analysis reports to the certified professional mould remediation company for their review and recommendation.
2. The Landlord shall provide to the Tenants, within seven (7) days of receipt, copies of any report or recommendation from the certified professional mould remediation company.
3. The Landlord shall ensure the recommendations are followed by no later than September 26, 2017.
4. Provided the Tenants are given 24 hours' notice of any intended entry, the Tenants shall not refuse entry to the Landlord and the certified professional mould remediation company hired by the Landlord. Should the Tenants refuse entry to the Landlord or those hired by the Landlord in furtherance of the above, the Landlord shall be at liberty to issue a further Notice to End Tenancy.

The balance of the Tenants' application is dismissed with leave to reapply.

The Landlord's application for an Order of Possession is dismissed. The Landlords' monetary claim is dismissed with 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: August 25, 2017

Residential Tenancy Branch