



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNR, ERP, LAT, LRE, MNDCT, FFT, OLC, RP

Introduction:

A hearing was convened on May 07, 2018 in response to an Application for Dispute Resolution filed by the Tenant and the Occupant in which they applied for a monetary Order for money owed or compensation for damage or loss, to cancel a Notice to End Tenancy, for an Order suspending or setting conditions on the Landlord's right to enter the rental unit, for authority to change the locks, for an Order requiring the Landlord to make repairs, for an Order requiring the Landlord to comply with the tenancy agreement or the *Residential Tenancy Act (Act)*, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Tenant withdrew all of these claims, with the exception of the claim for a monetary Order, as the rental unit has been vacated.

For reasons outlined in my interim decision of May 07, 2018, the security deposit is not an issue that will be considered at these proceedings.

The Tenant stated that on March 01, 2018 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant cited a tracking number that corroborates this statement. She stated that the package was returned to her by Canada Post several weeks after it was mailed.

The Landlord stated that she did not receive any notification that the aforementioned registered mail had been sent to her.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Application for Dispute Resolution and Notice of hearing were served to the Landlord in accordance with section 89 of the *Act*.

On the basis of the testimony of the Landlord and in the absence of evidence to the contrary, I find that the Landlord did not receive notice of the registered mail that was sent on March 01, 2018. In reaching this conclusion I find it possible that the registered mail was incorrectly delivered by Canada Post.

The Tenant stated that on April 20, 2018 the Application for Dispute Resolution, the Notice of Hearing, and all of the evidence the Tenant submitted to the Residential Tenancy Branch were again sent to the Landlord, via registered mail, at the service address noted on the Application. The Tenant cited a tracking number that corroborates this statement.

The Landlord stated that she received the Application for Dispute Resolution and the Notice of Hearing on April 27, 2018. The Landlord requested an adjournment as she requires more time to respond to the claims being made by the Tenant. The Tenant did not oppose the request for an adjournment. As the Landlord has not had sufficient time to respond to the claims being made by the Tenant, I concluded that the hearing should be adjourned.

As the Landlord did not acknowledge receiving all of the Tenant's evidence, the Tenant was directed to re-serve her evidence in accordance with the directions outlined in my interim decision of May 08, 2017. At the reconvened hearing the Tenant stated that she submitted 39 pages of evidence to the Residential Tenancy Branch in May of 2018. The Tenant stated that she served these documents to the Landlord on May 18, 2018, via registered mail. The Tenant submitted Canada Post documentation that corroborates this testimony.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the aforementioned evidence was served to the Landlord and it was accepted as evidence for these proceedings.

The Tenant stated that the Landlord did not serve her with any evidence regarding this matter.

As the Residential Tenancy Branch provided the Landlord with notice of this reconvened hearing and the Landlord did not attend the hearing on July 24, 2018, the hearing proceeded in the absence of the Landlord.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for deficiencies with this tenancy?

Background and Evidence:

The Tenant stated that this tenancy began on October 01, 2016 and that it ended on March 31, 2018. She stated that she gave the Landlord notice to end the tenancy because she did not feel the rental unit was being properly maintained and, in particular, she was concerned there was mold in the rental unit.

The Tenant is seeking compensation of \$2,937.50 because she does not believe the rental unit was properly maintained.

In support of the claim for \$2,937.50 the Tenant stated that:

- there was mold growing in the rental unit;
- she did not notice mold until the Landlord inspected the rental unit on February 01, 2018, at which time the Landlord showed her mold growing on the windows and one wall of the bedroom;
- the Landlord told her the mold was growing because the rental unit was not properly ventilated;
- the Landlord told her to open the windows to ventilate the room and to clean the mold from the wall and windows;
- she removed the mold from the wall and windows by cleaning these areas;
- on, or about, February 02, 2018 the occupant of the rental unit noticed the carpet in the bedroom with mold on the wall was wet;
- they determined that the carpet was wet because the Tenant's washing machine leaked;
- this leak was reported to the Landlord on, or about, February 16, 2018;
- the Landlord did nothing to repair the carpet;
- the Landlord told her that she was responsible for fixing the damaged carpet because it was her washing machine that caused the damage;
- she believes the leak was from a small hole in the drain pipe that the washing machine was attached to;
- on February 20, 2018 the Tenant gave notice to end the tenancy, effective March 31, 2018, because the Landlord would not fix the carpet and she was concerned that it would contribute to a mold problem in the rental unit;
- the gutters were blocked, which she believes contributed to mold growth in the rental unit;

- the blocked gutters were reported to the Landlord on, or about, February 05, 2018;
- the Landlord did not clean the gutters prior to the Tenant vacating the rental unit;
- water was pooling at the bottom of the gutters, which she believes was leaking into the foundation and contributing to the mold growth;
- she was concerned that there was mold growing inside the walls of the rental unit;
- she did not submit any proof to corroborate her concern that there was mold growing inside the walls of the rental unit;
- on, or about, October 15, 2017 she noticed water leaking below the kitchen sink;
- she immediately reported the leak to the Landlord;
- the Landlord looked under the sink and concluded there was no significant problem;
- she reported leak under the sink to the Landlord for a second time in February of 2018; and
- a plumber repaired the leak in February of 2018.

The Tenant submitted a letter which she stated was sent to the Landlord on February 12, 2018. In this letter the Tenant discusses some of the aforementioned concerns. Some of the declarations in this letter are inconsistent with the Tenant's testimony. For example, in the letter the Tenant declares the Landlord attempted to dry the carpet, albeit not to the Tenant's satisfaction.

The Tenant submitted a letter from the Landlord, dated February 16, 2018, in which the Landlord clearly informs the Tenant that:

- she believes it is the Tenant's responsibility to repair the carpet as she believes the carpets were damaged because the Tenant did not report a problem with a leaking tap;
- she believes that the problem with mold in the unit is because the Tenant has covered a window with a heavy sleeping bag, which has reduced ventilation in the room;
- the Tenant did not report a problem with the kitchen sink;
- the plumber replaced the sink drain because it was clogged with grease and a straw, which caused the sink to overflow;
- the skylight in the kitchen leaked on October 02, 2016;
- the leak was immediately reported to the Landlord;
- the Landlord repaired the leak shortly after it was reported;

- the Tenant thinks the leak was not properly repaired as she noticed water stains growing on the ceiling;
- she did not report the growing water stains to the Landlord until February 01, 2018;
- when this tenancy began the dryer hose was not properly vented out of the rental unit;
- this problem was never reported to the Landlord;
- she was unable to use one of the bedrooms because of the wet carpet; and
- when they moved out of the rental unit they had to put their property in storage because they could not find alternate accommodations.

Analysis:

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

Section 32(1) of the *Residential Tenancy Act (Act)* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 32(2) of the *Act* requires tenants to maintain reasonable health, cleanliness, and sanitary standards in the rental unit.

Section 32(3) of the *Act* requires tenants to repair damage to the rental unit that is caused by actions or neglect of the tenant or a guest of the tenant.

I find that the Tenant has submitted insufficient evidence to show that there was mold inside the walls of the rental unit. In reaching this conclusion I was heavily influenced by the absence of evidence, such as an inspection report from a qualified professional that corroborates the Tenant's concern that there was mold in these areas. As there is no evidence that there is mold inside the walls of the rental unit, I cannot conclude that the Landlord has breached section 32(1) of the *Act* by not addressing this issue.

On the basis of the undisputed evidence I find that the gutters required cleaning. As

this issue was not even reported to the Landlord until February 05, 2018, I find that the Tenant could have had no reasonable expectation that the Landlord would be aware that the gutters were blocked prior to that date. On the basis of the undisputed evidence I find that the gutters were not cleaned even after the problem was reported to the Landlord on February 05, 2018.

I find that the Landlord breached section 32(1) of the *Act* when she failed to clean the gutters after the problem was reported to her on February 05, 2018. I find, however, that the Tenant did not suffer any significant loss as a result of this breach and I therefore find that she is not entitled to any compensation as a result of the Landlord failing to clean the gutters.

In determining that the Tenant did not suffer a significant loss as a result of the Landlord failing to clean the gutters I was influenced, in part, by the absence of any independent evidence that establishes the blocked gutters contributed to mold in the rental unit. In determining that the Tenant did not suffer a significant loss as a result of the Landlord failing to clean the gutters I was influenced, in part, by the fact the rental unit was vacated less than 2 months after the clogged gutters were reported and, in my view, had minimal impact on this tenancy.

On the basis of the undisputed evidence I find that there was mold on one bedroom wall and around the windows. I find there is insufficient evidence to determine whether this mold was the result of water egress, as the Tenant speculates, or that this mold the result of improper ventilation, as the Landlord speculates. On the basis of the Tenant's testimony that the mold was removed by cleaning, I find it entirely likely that the mold was the result of improper ventilation and/or cleaning, which is the responsibility of the Tenant pursuant to section 32(2) of the *Act*.

On the basis of the undisputed evidence I find that water from the Tenant's washing machine leaked onto the carpet. I find that there is insufficient evidence to conclude that this leak was the result of a leak in the Landlord's drain pipe, as the Tenant contends, or that it was the result of a leaking faucet that was not reported to the Landlord, as the Landlord contends.

In the absence of evidence from a plumber or other independent source that establishes the source of the leak, I am simply unable to determine whether the Landlord is responsible for repairing the carpet, pursuant to section 32(1) of the *Act* or whether the Tenant is responsible for repairing the carpet, pursuant to section 32(3) of the *Act*. As

the Tenant has failed to meet the burden of proving that the Landlord failed to comply with section 32(1) of the *Act* in regards to the water leak, I dismiss the Tenant's claim for compensation in regards to the carpet.

I find that the Tenant submitted insufficient evidence to establish that she reported a problem with the kitchen sink in October of 2017. In reaching this conclusion I was heavily influenced by the absence of evidence to corroborate the Tenant's testimony that it was reported or that refutes the Landlord's written submission that it was not reported. As there is insufficient evidence that the Tenant reported a problem with the sink in 2017, I cannot conclude that the Landlord breached section 32(1) of the *Act* by failing to repair it at that time.

On the basis of the undisputed evidence I find that the Landlord became aware that the kitchen sink was leaking in February of 2018 and that it was repaired in February of 2018. I find that the Landlord complied with section 32(1) of the *Act* by repairing the sink within a reasonable period of time. As the Landlord complied with section 32(1) of the *Act*, I find that the Tenant is not entitled to compensation as a result of the leaking sink.

On the basis of the undisputed evidence I find that the Landlord was advised that a skylight was leaking on October 02, 2016 and that she took reasonable steps to repair that leak within a reasonable time. I find that the Landlord complied with section 32(1) of the *Act* by repairing the leak within a reasonable period of time. As the Landlord complied with section 32(1) of the *Act*, I find that the Tenant is not entitled to compensation as a result of a leaking skylight.

On the basis of the undisputed evidence I find that water stains on the ceiling in the rental unit were becoming larger, which is indicative of water egress. On the basis of the undisputed evidence I find that this information was not provided to the Landlord until February 01, 2018. As there is no evidence that water was actually leaking into the rental unit and the photographs of the stains do not convince me that an urgent repair was required, I cannot conclude that the Landlord breached section 32(1) of the *Act* when she did not immediately respond to this issue.

As the Tenant has failed to establish that the Landlord breached section 32(1) of the *Act* in regards to the water stains on the ceiling, I find that the Tenant is not entitled to compensation as a result of those stains.

On the basis of the undisputed evidence I find that when this tenancy began the dryer

hose was not properly vented out of the rental unit and that the problem was never reported to the Landlord. As the problem was not reported to the Landlord, the Tenant can have had no reasonable expectation that it would be repaired. I therefore find that the Tenant is not entitled to compensation as a result of the dryer hose.

I note that I have viewed the photographs of the rental unit, which is clearly an aging unit. Regardless of the fact the photographs demonstrate that the rental unit is not particularly aesthetically pleasing, I find that the Tenant has failed to establish that she is entitled to compensation because the Landlord has breached section 32(1) of the *Act*.

I find that the Tenant's Application for Dispute Resolution has been without merit and I dismiss her claim to recover the fee paid to file this Application.

Conclusion:

The Tenant's application for compensations 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: July 24, 2018

Residential Tenancy Branch