Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PRIMA PROPERTIES 118 LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT, OLC, RP

Introduction

On July 5, 2018, the Tenants applied for a Dispute Resolution proceeding seeking an Emergency Repair Order pursuant to Section 62 of the *Residential Tenancy Act* (the "*Act*"), seeking a Repair Order pursuant to Section 32 of the *Act*, seeking an Order for the Landlord to Comply pursuant to Section 62 of the *Act*, and seeking to recover the filling fee pursuant to Section 72 of the *Act*.

The Tenants attended the hearing and D.B. attended the hearing as agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant R.G. advised that she served the Landlord with the Notice of Hearing package by hand on July 6, 2018 and the Landlord confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package.

R.G. advised that she served her evidence to the Landlord by courier on August 14, 2018 and D.B. stated that he received this evidence and was prepared to respond to it. D.B. advised that his evidence was served to the R.G. by hand on August 20, 2018. R.G. confirmed receiving this evidence and advised that she was prepared to respond to it. As such, I have accepted both parties' evidence and will consider it in this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to an Emergency Repair Order?
- Is the Tenant entitled to a Repair Order?
- Is the Tenant entitled to an Order that the Landlord comply?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

Both parties agreed that the tenancy started on July 15, 2009, that the current rent was established at $3,559.00 per month due on the first of each month, and that a $1,500.00 security deposit was paid.

Tenants' submissions

R.G. stated that a flood occurred in the rental unit on March 24, 2011, contrary to the Landlord's documentation of March 23, 2011, where a substantial portion of the rental unit was "flooded in about 4 inches of water." She advised that they had to stay in a hotel for five nights until the remediation was completed, and she provided a receipt to confirm this. On approximately April 20, 2011, there was a subsequent flood in the rental unit which took three days to remediate. It was her belief that "no proper water remediation company or party was brought to flood #1 or flood #2…" She advised that there were subsequent floods in the building, that were all caused by a flawed water filtration system in the kitchens, and that her rental unit was affected from all directions.

She stated that her family "started to experience frequent cold and flu like health symptoms during the fall and winter months" after the floods of 2011, that these conditions would improve in the drier months and worsen in the damper months, and that this pattern continued for years. She advised that her family is experiencing "chronic respiratory and multiple other conditions" and that she was diagnosed as having COPD in 2015.

She submitted that due to her declining health, she visited the doctor frequently, was bed bound on and off for two and a half years, and she suffered from severe breathing difficulties and symptoms that left her "breathless and in sharp pain." She advised that she learned of the dangers of mould, which matched the described ailments.

She stated that the "type of mould that typically develops after floods is the Aspergillus/Penicillium and is classified as type 1A black mould, the most detrimental to human health." She submitted into evidence two doctor's notes that she asserts corroborates her claims regarding the declining health of her family due to the mould.

In February 2018, she retained the services of a water and mould remediation company to assess the original remediation work done from 2011 and retained the services of an environmental consultant to conduct a current mould assessment of the rental unit (the "Tenants' Assessment"). She stated that the presence of aspergillus/penicillium was discovered and that visible water damage around the baseboards confirmed that moisture was present after the flood remediation in 2011. She contacted D.B. in March 2018 to advise him of these results, and in response, he conducted inspections and contracted out his own independent mould

assessment (the “Landlord’s Assessment”) where the results contradicted the Tenants’ assessment. Both copies of the assessments were submitted as evidence.

She expressed differing opinions that she had with respect to how the Landlord inspected and assessed the situation, so she had a subsequent assessment (the “Tenants’ Second Assessment”) conducted in July 2018 by the same environmental consultant which confirmed the presence of a “few spores of aspergillus/penicillium present” but no mould growth on the carpet and the presence of a “slight growth” of penicillium under the kitchen cabinets. She submitted the report of the Tenants’ Second Assessment that confirmed the presence of mould spores, that suggested a moisture problem, and that outlined recommended steps to full remediation.

She submitted a letter from a doctor, dated April 9, 2018, advising of her son’s diagnosed respiratory issues, noting a CT scan result demonstrating airway inflammation, and indicating a “strong association of symptoms” linking mould particles to his condition. She submitted another letter from a separate doctor, dated June 28, 2018, which outlined her current health condition and noted the results of tests conducted. It was concluded that she has been diagnosed with “severe asthma with bronchiectasis with no evidence of an allergic component.”

She reiterated that the flood happened on March 24, 2011, not March 23, 2011 as stated by the Landlord’s remediation invoices, and she speculated that if this date was wrong, other facts may be wrong as well. She claimed that the Landlord did not want to bring in water extraction equipment for the flooding and that the invoices for remediation provided by the Landlord do not indicate that water extraction devices were utilized. She stated that the remediation company she contracted advised that a carpet that is wet for more than 24 hours should be replaced; however, the carpet in the rental unit was wet for five days and was not replaced.

A.G. stated that he noticed a slow decline in his health starting in 2011, and he had been wondering about the cause. However, he confirmed that the doctor’s note submitted only pertains to his recent health.

L.C. re-iterated that, with respect to the remediation of the floods in 2011, he did not note seeing any water extraction devices in any of the Landlord’s evidence, and he only noticed that fans were utilized. He referred to the Laboratory Analytical Results of the Tenants’ Assessment and advised that samples of the outdoor environment were measured to compare to that of the indoor environment. When pressed on the results of Laboratory Analytical Results of the Tenants’ Assessment, he did not provide much assistance in analysing or explaining the significance or meaning of the results other than to confirm that there is a level of fungal mould spores detected.

Landlord’s submissions

D.B. confirmed that there were floods in 2011; however, he refuted R.G.'s claim of four inches of water in the suite as that volume of water would amount to a catastrophic incident. He advised that a professional, and qualified restoration company was contracted out and completed the remediation of the floods to industry standards.

D.B. submitted notices sent to the Tenants in 2014, 2016, 2017, and 2018 advising of the rent increase for the upcoming year and indicating that any comments or concerns with the tenancy can be brought to the attention of the Landlord. However, the only notification he had received from the Tenants of a problem was on March 26, 2018 when the Tenants notified him of a potential presence of mould in the rental unit. He stated that he took immediate action by attempting to call the Tenants the next day; however, there was no response. He then provided the appropriate written notice to investigate the issue on March 28, 2018. During this thorough inspection, no evidence of mould or mildew was detected. However, it was noted that the rental unit was recently cleaned, with the exception of window sills in the master bedroom, which were dirty/dusty and condensation was evident. D.B. advised the Tenants that the issue must be investigated further but if it was the Tenants' belief that there was a serious health concern, the Landlord would assist them with an early move out.

On March 29, 2018, D.B. requested the restoration reports of the two floods in 2011. On April 17, 2018, D.B. responded to the Tenants' request for an update and to be relocated to a different unit and the Tenants were advised that the strata is investigating the issue and likely hiring an environmental expert. As well, the Tenants were advised that the notice period for ending a tenancy could be waived if they believed there were still health concerns. On this day, he also received the restoration reports outlining how the floods were remediated. These reports were submitted into evidence.

On May 25, 2018, the Landlord contracted an accredited and qualified environmental expert to conduct the Landlord's Assessment, where it was determined that there were no observed concerns for mould nor were there high moisture levels or immediate health concerns; however, the lab results of the assessment would take two weeks. The Tenants were advised of this. On June 15, 2018, the Tenants were advised of and provided with the environmental expert report indicating that there was no mould contamination or active water leaks; however, it was recommended that a baseboard section be investigated for hidden mould. This section of the baseboard was removed on June 20, 2018 for inspection and no evidence of water ingress, water damage or mould was discovered. R.G. requested further areas to be investigated and she became agitated, aggressive, and frantic when the Landlord would not complete further destructive investigations. This also led to further difficulties in allowing the Landlord to complete the necessary repairs to the baseboard. The Landlord's environmental expert's mould assessment report was entered into evidence.

D.B. advised that building staff enter each unit at least three times a year for general maintenance and safety inspections. No mould, mildew, or high levels of moisture were observed in any suites affected by the floods of 2011 and the Landlord was only notified of the

Tenants' concerns in March 2018, at which point, the Landlord took immediate action to protect the Tenants' right to quiet enjoyment. With respect to the differing environmental assessments results, he noted that there are failings in the report contracted by the Tenants as the company neglected to include outdoor measurements of airborne spores as a baseline. As well, he stated that the recommendations for remediation in the Tenants' Assessment had already been completed by the remediation company after the floods and reiterated that the environmental expert that he contracted advised that no further action was required.

D.B. stated that the doctor's letters were based on the Tenants' complaints and the erroneous findings of their environmental engineer. As well, the rental unit is located near traffic congestion as well as near Stanley Park; therefore, pollutants and natural airborne fungal spores could be responsible for some health concerns. In addition, significant marijuana use was documented in the rental unit which could also lead to respiratory issues.

D.B. also stated that the Tenants hired a cleaner who cleaned the rental unit in March 2018, after the Tenants' Assessment. The report of the cleaner was submitted into evidence and it was noted that the rental unit was extremely dirty, the windows were very dirty, condensation was present at the window sills, and a "blackish substance" was observed. D.B. speculates that the living conditions of the Tenants could have contributed to the results of the Tenants' Assessment. He noted that the Tenants' Second Assessment was completed after the Dispute Resolution Application was filed and that the results were not provided until August 14, 2018.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 33 of the *Act* outlines the Landlord's and Tenants' duties when an emergency repair is required.

Emergency repairs

33 (1) In this section, **"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.

(2) The landlord must post and maintain in a conspicuous place on residential property, or give to a tenant in writing, the name and telephone number of a person the tenant is to contact for emergency repairs.

(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.

Furthermore, Section 32 of the *Act* requires that the Landlord maintain the rental unit 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, make it suitable for occupation by the Tenant.

In reviewing the totality of the evidence before me, the crux of this issue is whether there is mould as a result of the floods of 2011 not being remediated properly. I find it important to note that the onus for proving a claim is on the party making the Application; however, the following points cause me to doubt the credibility of the Tenants' claims:

- The consistent evidence before me is that there were flooding issues in 2011 that affected the rental unit; however, while it is R.G.'s belief that water extraction devices were necessary to rectify the moisture issues, she has not provided any evidence to substantiate this belief. Furthermore, I find that R.G.'s claims of four inches of water in the rental unit to be exaggerated as there is no proof of this and I can reasonably infer that this amount of water would be disastrous and would lead to substantially more damage.

- While the Tenants alleged that they have been in declining health for years, I do not find it reasonable that it has taken seven years of apparent prolonged exposure to bring this issue to light. A.G. suggested a "slow decline" in health and R.G. stated that she had frequent visits to the doctor and the hospital and that she has been "bed bound for on and off approximately 2 ½ years and [her] family and friends fear[ed] for [her] life". I find

it unlikely that it would have taken seven years to diagnose these health issues and isolate the source of the problem given the stated severity of these health conditions.

- R.G. stated that she was diagnosed with COPD in 2015; however, there is no documented medical evidence to substantiate this. Furthermore, there is no medical evidence submitted to link this diagnosis to any apparent mould issue. I do not find that this lends any support to the likeliness of the Tenants' allegations.

- There has been no medical history submitted into evidence outlining a progression of symptoms that any of the Tenants endured over the last seven years. As the apparent health issues were ongoing and constant, I find it dubious that there are no additional documents submitted that corroborate a timeline of declining health over the last seven years.

- When reviewing the doctor letter with respect to A.G.'s health, the doctor refers to a "constant musky order[sic]" which I can reasonably infer that he cannot directly speak to as he has not likely been to the rental unit. Moreover, the consistent evidence from all parties, including from all the assessments, is that there has not been an odour as described that has been detected. As such, I find it more likely than not that the first two paragraphs in the letter was information that was provided to the doctor by A.G. Therefore, I find that the information contained within the first two paragraphs that he relied on to formulate this letter to be less reliable. Consequently, I find it more likely than not that a causal fallacy has been created that erroneously links the CT scan results to the information relayed to him by A.G.

- When reviewing the doctor letter with respect to R.G.'s health, it appears as if she has had a pre-existing condition of asthma, as there is no indication that the development of this condition was caused by exposure to mould. The doctor also noted that "the precipitin for aspergillus was negative", that there is "no evidence of an allergic component", and that the "Sputum culture demonstrated no AAFB, fungus or bacterial growth" which indicates to me that the tests conducted have shown that R.G. is not allergic to this particular strain of mould. As such, I find that this further detracts from the Tenants' allegations that supports the presence of toxic levels of mould in the rental unit.

- I do not find it reasonable that if there is a presence of a toxic mould and the health issues were so severe, that the symptoms would be intermittent and dependent on the climate of differing seasons.

- While the conclusions of the Tenants' Assessment and the Landlord's Assessment differ, I am not persuaded that the levels of spores detected are above the normal levels found in a typical residence. As such, I do not find these results to be an indication of the origins of the issue in this instance.

- However, I find it important to note that the Tenants' Second Assessment noted that there was "few spores of aspergillus/penicillium present" but no mould growth on the carpet and that there was the presence of a "slight growth" of penicillium under the kitchen cabinets. Had the remediation of the rental unit been completed improperly after the floods of 2011, I am skeptical that the limited development of the mould detected would have been so minimal over the course of seven years.

Based on the above points and the doubts created by the Tenants' evidence, I am satisfied that the Landlord's evidence is more compelling and persuasive. When weighing the evidence on a balance of probabilities, I am satisfied of the Landlord's evidence that a professional, and qualified restoration company was contracted and the appropriate remediation was completed to the rental unit after the floods of 2011.

As such, I find that the Landlord complied with their responsibilities under the *Act* and took the necessary steps, within a timely manner, to remediate the flooding. Furthermore, I am satisfied that the Landlord provided compelling evidence to demonstrate that due to the proper remediation, they were not negligent for the presence of any current mould issues that may have developed since 2011.

Ultimately, I do not find that the Tenants have substantiated a claim that an Emergency Repair Order, a Repair Order, or an Order for the Landlord to Comply are necessary to be granted in this particular instance. Consequently, I dismiss the Tenants' claims in their entirety.

As the Tenants were unsuccessful in this Application, I find that the Tenants are not entitled to recover the $100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenants' Application without 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: September 19, 2018

Residential Tenancy Branch