



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIDDLEGATE DEVELOPMENTS LTD - LINCOLN HOUSE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ERP, MNDC, RP, RR, LRE FF

Introduction

This hearing was convened in response to an application filed by the tenant and ultimately orally amended in the hearing seeking Orders under the *Residential Tenancy Act* (the Act) as follows:

- A reduction of rent in compensation for a loss – Section 65
- Order the landlord to provide a “professional mould inspection”
- Order the landlord to provide a letter of apology
- *Aggravated damages*
- To recover the filing fee from the landlord for this application – Section 72

Both parties participated in the hearing and provided testimony. As well, the parties forwarded evidence / submission prior to the hearing, which each party confirmed receiving. The parties were further provided opportunity to mutually resolve their dispute to no avail.

Issue(s) to be Decided

Is the tenant entitled to a rent reduction for loss?

Has the tenant established, on a balance of probabilities, that they have suffered a loss due to the landlord’s neglect or failure to comply with the Act, regulations or tenancy agreement?

Should the landlord be Ordered to arrange or provide an inspection focused on determining the possibility of mould in the bathroom ceiling?

Should the landlord be Ordered to apologize to the tenant?

Is the tenant entitled to *aggravated damages*?

Is the tenant entitled to recover their filing fee?

The burden of proving a loss rests on the claimant tenant.

Background and Evidence

This tenancy started October 2011. Rent is \$1585 per month. The tenancy continues.

The tenant testified that in May 2018 they made a request to the landlord for repair to a portion of their bathroom ceiling which displayed some deficiency in the paint (bubbling). The tenant claims it likely resulted from a dated leak from the upstairs toilet directly above the unit and possibly mould in the ceiling. The landlord denied receiving such a request from the tenant or that a mould issue exists. The parties agreed that later in June 2018 their rental unit was presented to a relevant party as a model representation of the building's good condition. During which episode the tenant claims they verbally alerted a manager, K., to the ceiling issue and requested it be repaired. The tenant testified they and the manager agreed the matter could wait due to other pressing matters of the day with the landlord. The landlord attending this matter denied they ever learned of or knew of the tenant's claimed request to manager K. The parties agreed that in June 2018 the tenant sent a text to the landlord referencing paint bubbling on the ceiling above the toilet. The parties agreed that the landlord's response effectively requested the tenant wait for a resolution as there were urgent issues facing the landlord from the other abundance of rental units as well as administrative pressures in respect to re-financing of the residential property. The tenant continued to make certain requests and in the process the tenant claims the landlord (resident manager DB) responded unprofessionally, alleging the landlord resorted to name-calling and profanity. The landlord effectively denied that their version of events and those of the tenant have similarity. None the less, the tenant did report her unsatisfactory experience with the manager to their superior but has not received a response to date.

The tenant provided that they ultimately placed their issue of a problem with their bathroom ceiling in writing on September 17, 2018 and the parties agreed the landlord attended to the matter on September 19, 2018, and that as of this date the parties confirmed the ceiling issue was ultimately resolved to the tenant's satisfaction. The tenant claims that an inordinate amount of time evolved from May 2018 to final resolution of the ceiling deficiency, for which a rent reduction is warranted.

The tenant testified that according to their personal enquiries to certain professionals and their resulting determinations respecting the ceiling matters they are of the opinion

there may be a remaining mould problem inside the ceiling, given that 2 years before the problem started with water ingress from a toilet. The tenant testified that in the interim they have experienced sinus infections, as has their visiting daughter on attending the rental unit. The landlord testified that in dealing with the ceiling repair their certified plumbers inspected the area and ascertained there was no mould in the ceiling.

Analysis

On preponderance of the evidence and on the balance of probabilities, I have arrived at the following findings.

While I can accept that the tenant's enquiries into mould have given the tenant concern about mould I find I have not been presented sufficient evidence from the tenant respecting their enquiries or other related claims supporting the probable existence of mould in the bathroom ceiling so as to allow me to Order the landlord bear the cost of an outside inspection. In this matter, I prefer the eyewitness results of the landlord's plumbers over the speculations arrived at by the tenant. As a result, this portion of the tenant's claim is **dismissed**, without leave to reapply.

I find the evidence is clear that despite the existence of a formal written request for repairs the tenant alerted the landlord of a deficiency with the bathroom ceiling in June 2018 at which time the landlord was on notice to attend to the problem and had a duty to do so. None the less, I accept the landlord's assessment that vis a vis other more urgent requests for their time the tenant's ceiling problem was not of equal urgency and they did not refuse to make a repair. I note that neither the Act nor Regulation places time parameters on the landlord's obligation to make repairs. In this matter, the issue was escalated once the tenant placed their repair request in writing in September 2017 and then attended to by the landlord's plumber 2 days later. Overall I do not find that in this matter the tenant's wait for the repair was an unreasonable amount of time. I find the tenant did not provide sufficient evidence supporting reduction of rent. None the less, I accept the tenant had to endure a period in which their bathroom ceiling was unsightly and therefore troubling to the tenant, as supported by the landlord's own indirect praise of the good condition in which the tenant has kept the rental unit. Therefore, I grant the tenant set *nominal compensation* of **\$50.00**, without leave to reapply.

In respect to the tenant's remaining claims, it must first be noted that I cannot order the landlord to apologize for any conduct, albeit it does not prohibit the landlord from making an apology. An apology is an offered expression of true remorse, and by

additional definition an apology is a representation of valid regret if volunteered under duress, as by an Arbitrator's Order. But moreover, I find there is no remedy under the Act for this claim and I must **dismiss** it.

Residential Tenancy Policy Guideline 16 speaks to the subject of *Aggravated Damages* as follows: **(emphasis added)**

- “*Aggravated damages*” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where **significant damage** or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

Therefore, *aggravated damages* are damages awarded to compensate and take into account intangible injuries in addition to the normally assessed pecuniary or monetary damages. They are an award of compensatory damages for non-monetary losses. These damages, such as damages for aggravation (aggravated damages) which the tenant seeks are measured by the wronged person's suffering and must be sufficient and significant in depth or duration or both, that they represent a significant influence on the wronged person's life

The tenant has not established by their evidence the existence of troubling exchanges with the landlord to warrant a finding of loss of quiet enjoyment or that their claimed exchanges with the landlord caused the tenant additional out of pocket expenses. I also find the tenant's claims of aggravation are an attempt to punish the landlord and I do not have the authority to award *punitive damages* in order to punish the landlord. As a result of all the above, this claim is **dismissed**, without leave to reapply.

As the tenant has had limited success in their application I grant the tenant a portion of their filing fee in the amount of \$50.00, for total compensation of **\$100.00**.

Order(s)

I Order that the tenant may deduct the sum amount of **\$100.00** from a future rent in full satisfaction of their award.

Conclusion

In its compensable parts, the tenant's application has been granted and the balance of their claims dismissed, without leave to reapply.

This Decision is final and binding.

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: January 14, 2019

Residential Tenancy Branch