



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes ERP RR FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to the service of the tenant's application and evidence submissions by the parties.

The parties confirmed that subsequent to filing of the application, the tenants vacated the rental unit on December 31, 2018. Therefore, the tenants withdrew the request for an order requiring the landlord to make emergency repairs.

Issue(s)

Are the tenants entitled to compensation in the form of a past rent reduction for loss of use and enjoyment?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and testimony of the parties, not all the details of the submissions and/or arguments are reproduced here. Only the facts and evidence which underpin my findings on the issue(s) identified above are summarized and addressed.

The tenancy for this residential house began on March 15, 2017. The tenancy was renewed on April 1, 2018. The monthly rent as per the renewed agreement was \$2756.00 payable on the 1st of each month. The tenancy ended on December 31, 2018.

The tenants are seeking a reduction in rent equivalent to five full months of rent equating to \$13,780.00.

On November 14, 2018 the tenants reported a potential mold issue in the upstairs master bedroom to the landlord. On November 27, 2018 the landlord hired an environmental company to perform a mold assessment. The mold assessment report confirmed a musty odor as well as elevated levels of mold in air samples in the upstairs bedroom. As per the report, the likely cause was water ingress from the window area in the bedroom. The report recommended an assessment by a building envelope consultant to determine the exact cause and remedy. The report also indicates there was a plumbing leak under the kitchen sink cabinet and that there was mold growth on the base of the shelf cabinet.

The tenants testified that as of November 2018 they could no longer stay in upstairs bedroom due to the musty odor and moved their bed down to the living room. The tenants submit that they lost of enjoyment of their home. The tenants submit the landlord first inspected the home on November 16, 2018, two days after they reported the mold issue. A second inspection was done by the landlord on November 23, 2018. The tenants submit the landlord was at first reluctant to have the mold assessment done by later agreed. The tenants submit that after obtaining the results of the report, the landlord just told them to find another place to live and did not provide any help or guidance. The tenants found alternative accommodation and vacated the rental unit at the end of December 2018 but testified that they felt pushed out. The tenants testified that they were advised the rental unit was not inhabitable with the mold and further they were advised that due to the rainy season, repairs could not be commenced immediately.

The tenants submit that there were ongoing issues with various leaks in the rental unit including in the garage and under the kitchen sink and that the landlord did not take appropriate steps to make repairs throughout the tenancy. The tenants also testified that they experienced issues with allergies and asthma as early as April 2018 and also suffered headaches.

The landlord's agent disputed the tenants' claims in regards to ongoing leaks. The landlord's agent referred to the move-in inspection report and follow up e-mail summary sent to the tenants both of which contain no mention of mold or leaks in the rental unit. The landlord's agent submits that the tenants did not notify the landlord of the mold issue in the master bedroom until November 14, 2018. The landlord's agent submits they took this issue seriously as evidenced by the follow-up inspections and hiring the mold assessment company. The landlord's agent acknowledged the master bedroom was not livable but argues that there were no issues with the rest of the rental unit. The landlord's agent submits that they immediately offered the tenants with the option to vacate without any penalty for breaking the lease and also offered the tenants a rent reduction. The landlord's agent submits that as the mold issue in the bedroom was likely caused by an issue with the building envelope, the rainy season was not the best time to undertake such repairs.

Analysis

Pursuant to section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

I find the landlord did respond to the mold issue in the upstairs bedroom in a timely manner after it was reported by the tenants on November 14, 2018. Although the landlord responded in a timely manner, the landlord's own evidence was that the repairs could not be undertaken immediately. As a result, there was no dispute that the tenant's suffered some loss of use and enjoyment of the rental unit from the date of reporting to the end of the tenancy on December 31, 2018. There was no dispute that the mold issue was serious and that the tenants moved their bed into the living room of the rental unit due to health concerns. I find that as a result the tenants not only suffered a loss of use of their bedroom but also suffered a loss of use and enjoyment of their downstairs living room area. I find that a 50% rent reduction is a reasonable estimate of the loss suffered by the tenants which includes compensation for loss of use

of the bedroom, loss of use of the living room as it is ordinarily intended to be used and loss of enjoyment of the rental unit as a whole as a result of the inconvenience, stress and anxiety caused by the situation. The tenants are awarded \$780.87 which is 50% of the pro-rated rent paid for the 17 day period from November 14, 2018 to November 30, 2018 ($\$2756.00/30 \times 17 \text{ days} \times 50\%$) plus \$1378.00 which is 50% of December 2018 rent paid. **The total award to the tenants is \$2158.87.**

The tenants did not apply for any moving costs specifically so I make no award for such. I also do not award any compensation for any alleged health implications as the tenants provided no supporting evidence of such or any proof of loss suffered as a result.

I also dismiss the tenants claim for losses suffered as a result of the landlord allegedly not responding to various other reported issues throughout the tenancy. The tenants provided no evidence of how they suffered any loss as a result of the mold growth under the kitchen sink or the leak in the garage or as a result of any of the other reported issues.

As the tenants were not fully successful in this application, I find that the tenants are not entitled to recover the filing fee paid for this application from the landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$2158.87. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 28, 2019

Residential Tenancy Branch