



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NW23 STRATA CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

RP, ERP, MNDCT

Introduction

This hearing was scheduled to deal with a tenant's application for repair orders, including emergency repairs, and a Monetary Order for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the tenant served her hearing documents and evidence to the landlord. I also confirmed that the landlord had not submitted any evidence or submissions prior to the hearing and intended to provide its position orally during the hearing.

Shortly after the hearing was underway I confirmed with the parties that the repairs the tenant sought to have made have since been completed and that the only outstanding issue for me to resolve is the tenant's monetary claim.

I noted that the name of the landlord is that of a strata corporation. I explored with both parties the nature of their relationship and ownership of the subject unit. Both parties were in agreement and I was satisfied that the parties have a residential tenancy agreement to which the Act applies.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation in the amount claimed for loss of use and enjoyment of the rental unit?

Background and Evidence

The tenancy started in August 2017 and the tenant is required to pay rent of \$1,100.00 on the first day of every month. The rental unit was described as being a small house on a crawl space.

The tenant submitted that on January 23, 2019 the tenant was moving items in the bedroom closet and found the possessions to be wet and the wall of the closet was mouldy. Shortly thereafter the tenant sent an email to the landlord and the landlord responded to acknowledge the tenant's message a few hours later. Nothing further came of her complaint and approximately 1.5 weeks later the tenant approached one of the council members about the situation. Without action being taken by the landlord, the tenant made a formal complaint in writing and put it in the landlord's mailbox on February 8, 2019.

On or about February 12, 2019 the landlord sent a person to clean the surface of the drywall. The tenant was of the position the cleaning was inadequate and the inappropriate cleaning solution applied. The tenant communicated to the landlord that he cleaning attempt was insufficient and requested professional mould removal.

The landlord's agent stated the solution applied to the wall on February 12, 2019 was a mould remover. The tenant described the solution as being a detergent with Oxyclean.

On February 21, 2019 the tenant filed her Application for Dispute Resolution and served it along with her evidence to the landlord on February 22, 2019. On February 23 or 25, 2019 the landlord's agent commenced efforts to remove the mould by installing vapour barrier in front of the closet, removing the mouldy drywall, drying the wall cavity with a dehumidifier, and then replacing the drywall. The job was completed on March 10, 2019.

The landlord's agent could not provide an explanation as to why the landlord did not send somebody to deal with the tenant's complaint sooner than February 12, 2019 considering the tenant's first complaint was received on January 23, 2019.

Both parties were of the same mind that the likely cause of the mould was the result of a water line that burst in the crawl space area under the house in August 2018. The broken water line was repaired by a plumber but there was no further remediation action taken to deal with water or moisture under the house. It was undisputed that the

landlord's handyman went under the house after the pipe was repaired and indicated no further repairs were needed. The tenant pointed out that the landlord's handyman is not trained in mould remediation.

The tenant seeks compensation of \$600.00 for loss of use and enjoyment of the bedroom where the mouldy closet was located. The tenant submitted that the bedroom and bathroom are connected and that area represents approximately one-half of the square footage of the rental unit. The tenant testified that her son usually occupies the bedroom and that while the mould was present her son could not use the bedroom and was sleeping in the living room. When the tenant filed her claim, she had been waiting almost one month for the landlord's to adequately deal with the situation.

The landlord was of the position the tenant's monetary claim was excessive considering the tenant only lost use of the bedroom closet when he sealed it off on February 23, 2019.

The tenant requested authorization to deduct compensation she is awarded from rent otherwise payable to the landlord which is made by pre-authorized debit. The landlord confirmed that the tenant pays rent by pre-authorized debit and that the debit will be adjusted for any award I give the tenant as soon as possible after receiving the decision.

Analysis

Under section 32 of the Act, a landlord is required to repair and maintain a rental unit and residential property so that it meets health, safety and building laws and is suitable for occupation by a tenant, having regard for its age, character and location.

Under section 28 of the Act, a tenant is entitled to use and enjoyment of the rental unit free from unreasonable disturbance or significant interference. Where a tenant suffers loss of use and/or enjoyment of the rental unit the tenant may be entitled to compensation from the landlord for the loss. Residential Tenancy Branch Policy Guideline 6: *Entitlement to Quiet Enjoyment* provides information with respect to loss of quiet enjoyment including the following:

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

The policy guideline also provides that in order to find a breach of quiet enjoyment the loss must be more than a temporary discomfort or inconvenience.

It was undisputed that in August 2018 a water pipe burst under the rental unit and that, although a plumber fixed the leak, there were no further efforts to address water or moisture under the house and then mould formed in the closet of the bedroom. I accept that the mould was the result of the burst pipe and the lack of sufficient action to inhibit the formation of mould. Therefore, I find the landlord's negligence caused the formation of mould; the landlord was responsible for dealing with the mould; and I find it reasonable to expect the landlord would take quick action to rectify the situation once the landlord was notified of the mould situation by the tenant.

The tenant communicated to the landlord that there was mould in the rental unit on January 23, 2019 and the landlord acknowledged receipt of the tenant's email but did not appear to take action until after the tenant made two more complaints: once to the council member in person and another by way of the formal written complaint dated February 8, 2019.

Given the extensive nature of the mould on drywall that stemmed from water underneath the house, I find the attempt to remove the mould by cleaning the surface of the drywall was inadequate as it would not address the mould that would be on the inside of the wall cavity.

It took until after being served with the tenant's Application for Dispute Resolution for the landlord to finally take sufficient action to address the mould situation, approximately one month after the tenant made her first complaint, and I find that amount of time to be unreasonable in the circumstance. Therefore, I find the tenant's loss of use of the area to be more than temporary or an inconvenience and I find the tenant is entitled to be compensated for loss of use caused by the unreasonable delay in dealing with this situation.

As for the amount of compensation appropriate in this case, I find it reasonable to expect that an adequate response could have commenced within days of the first complaint being received on January 23, 2019 considering the landlord responded in a matter of days once the tenant served her Application for Dispute Resolution upon the landlord. Instead the tenant had to wait just about a month for adequate repairs to commence. Therefore, I find it appropriate to award the tenant compensation for one month of loss of use and enjoyment.

I accept that the closet was exposed to the bedroom and that the bedroom was not used for sleeping or activity for that month except to pass through to access the bathroom and store the bedroom furniture. I did not hear that the bathroom was unusable and I factor into my decision that only the bedroom was largely affected for that month. Therefore, I find the tenant's request for more than half her monthly rent to be excessive and I award a more appropriate award to be \$400.00.

I accept that the closet area was the only area that was unusable after the landlord commenced an appropriate repair which is a relatively small area and only an inconvenience and I do not award the tenant compensation for the period of February 25, 2019 to March 10, 2019.

In light of the above, I award the tenant compensation totalling \$400.00. I authorize the tenant to deduct \$400.00 from a subsequent month's rent. I heard the tenant pays rent by way of a pre-authorized debit and I order the landlord to reduce the tenant's next monthly rent payment, or as soon as possible, by \$400.00 in satisfaction of my award.

Conclusion

The tenant is awarded compensation of \$400.00 for loss of use and enjoyment of the bedroom for approximately one month. The landlord is ordered to reduce the tenant's next rent payment, or as soon as possible, by \$400.00 in satisfaction of this award.

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: March 28, 2019

Residential Tenancy Branch