



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

ERP OLC RP RR

Introduction

This decision is in respect of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenant seeks the following remedies:

1. an order for the landlords to make emergency repairs;
2. an order for the landlords to make regular repairs;
3. an order to reduce rent; and,
4. an order that the landlords comply with the Act.

A dispute resolution hearing was convened on March 1, 2019 and the tenant attended, was given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The landlords did not attend the hearing.

The tenant testified that she served the Notice of Dispute Resolution Proceeding package, along with all her documentary evidence, on the landlords in-person on February 4, 2019.

Given the above, I find that the tenant served the landlords with the Notice of Dispute Resolution Proceeding and her evidence in compliance with section 89 of the Act and the *Rules of Procedure*.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the tenant entitled to an order for the landlords to make emergency repairs?

2. Is the tenant entitled to an order for the landlords to make regular repairs?
3. Is the tenant entitled to an order to reduce rent?
4. Is the tenant entitled to an order that the landlords comply with the Act?

Background and Evidence

The tenant testified that the tenancy began on May 15, 2015, and that monthly rent is currently \$850.00. She paid a security deposit of \$400.00, and no pet damage deposit. A copy of a newer written tenancy agreement was submitted into evidence.

She testified that she lives in a cold basement suite, and that she seeks an order that the landlords repair the rental unit to address an ongoing mold problem. The tenant provided a written request (dated December 31, 2018, and submitted into evidence) to the landlords which reads as follows:

The mold issue still poses a problem. I do not believe that you have done a proper removal or cleaning of the mold that was in the floor and in the walls in my suite. You had only replaced a small piece of drywall where the cabinets were in the kitchen and simply painted over the rest. You also did not address the issue of the concrete that was chewed up and cracked in the kitchen. This will only lead to further moisture entering the suite. Without fixing these problems properly, mold will simply come back and continue to grow. You had mentioned that you have had problems with the plumbing previously every 5 years or so. When I asked if there was mold behind the wall when you removed the old cabinets and replaced them with new ones in the summer of 2017, you did not respond. I question if this has been an ongoing issue since my arrival into the suite on May 15, 2015. There are serious plumbing and leaking issues that need to be dealt with immediately. I want the kitchen floor and cabinets removed so that repairs to the walls and floor concrete pad cleaning and disinfecting can be done properly this time.

The tenant also submitted a written submission in which her request for an order is outlined:

To ensure that proper repairs will be done, I am requesting that a professional contractor be hired. The Landlord has not properly repaired or got rid of the mold the basement suite. I would like all the mold be removed from the suite, new drywall installed and repairs made to the concrete floor. I am also requested that mold samples be tested and an air quality test be done.

She explained that there was a water flooding issue in 2018, and that this lead to an exacerbation of the issue. She said that moisture continues to seep into the concrete floors and that, while the landlords installed new flooring after the flood, they did not perform adequate clean-up.

Mold also got into the drywall and wall on which the kitchen cabinets are affixed, and when she removed the cabinets of her own accord, noticed that the landlords had (during their “repairs”) merely painted over the walls. She also commented that the new floors are so basic in that they lack any kind of proper underlay that might be found in a home. She has made many requests from the landlord (summarized in a written submission) to deal with the issues, to no avail.

In her final submissions, the tenant commented that she keeps getting sick, and believes that this is from the mold in the rental unit. Several photographs of the mold were submitted into evidence by the tenant.

A monetary order worksheet was submitted into evidence which outlines and lists the specific aspects of a monetary claim for \$2,898.40, for which she seeks a reduction in future rent.

The claim comprises of the following amounts: \$112.00 for “8 days no running water in kitchen”; \$1,275.00 for “46 days unliveable conditions” (1½ rent); \$425.00 for “partial loss of suite – unable to use kitchen or living room” (½ rent); \$425.00 for “partial loss of suite – kitchen and living room” (½ rent); \$400.00 for “stress, anxiety and health issues, persistent coughing, trouble breathing, headaches, etc.”; \$200.00 for “labour costs for 4 days – cleaning and packing and unpacking entire kitchen and living room”; and \$61.40 for “supplies – seal wall, doorway with plastic.”

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Claim for Compensation by way of Rent Reduction

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Further, section 67 of the Act states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

Finally, I note that section 65(1)(f) of the Act states that “past or future rent may be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.”

Section 32(1) of the Act states that

A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Here, despite her requests to the landlords to have the mold removed by way of repairs to the rental unit, they have not done so in a manner that has eliminated the mold. The tenant suffers from various health issues because of the mold. I find that the landlords have not provided and maintained the rental unit that makes it suitable for occupation by a tenant. The written submission of the tenant, specifically the monetary order worksheet, provides reasonable amounts by which the value of the tenancy has been reduced do the rental unit not being suitable for occupation by the tenant.

Given the above, I find that the landlords have failed to comply with the Act and that the tenant has suffered loss resulting from their non-compliance. The tenant has proven reasonable amounts for the value of her loss, and, despite the ongoing issue she continues to live in the rental unit. In other words, she has I find done whatever is reasonable to minimize her loss. This includes trying to determine the source of the problem by personally removing the cabinets and purchasing plastic sheets for protection.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim for an order reducing rent under section 65(1)(f) of the Act. The amount claimed of \$2,898.40 shall be satisfied through a monthly deduction in rent in the amount of \$483.07 per month from April 1, 2019 to September 1, 2019, inclusive. The tenant may deduct \$483.07 from the rent for the above-listed six months.

Emergency Repair Order, Regular Repair Order and Order that the Landlords Comply with the Act

Section 33 of the Act deals with emergency repairs. I shall cite section 33(1) in its entirety for the benefit of the parties:

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.

Based on the evidence provided by the tenant, the issues with mold do not appear to be the result of anything listed in subsection 33(1)(c) of the above-noted section. As such, I find that there is insufficient evidence for me to consider issuing an order for emergency repairs.

However, based on the evidence, and taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving her claim for an order under section 62(3) of the Act. Her application for an order for regular repairs under section 65 of the Act is subsumed within an order under section 62(3) of the Act.

Section 62(3) of the Act states as follows:

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Conclusion

I HEREBY ORDER THAT:

1. Pursuant to section 62(3) of the Act, the landlords must comply with the Act by completing the following repairs to the rental unit:
 - i. complete replacement of, and installation of new, drywall and insulation on the wall on which the kitchen cabinets are attached;
 - ii. complete replacement of the floor of the rental unit which must include repair and sealing of any cracks in the concrete/cement, and that the new floor include an underlay
2. The above-noted repairs and installation must be completed within 6 weeks of the date this Decision is served on the landlords.
3. Upon completion of the above-noted repairs and installation, the landlords must have a residential mold testing completed from a Certified Residential and

Commercial Mold Inspector, and a copy of the inspector's report be provided to the tenant, within 4 weeks of the completion of the repairs and installation.

4. Pursuant to section 65(1)(f) of the Act, future rent is reduced by, and the tenant may deduct from future rent, \$483.07 per month from April 1, 2019 to September 1, 2019, inclusive.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 1, 2019

Residential Tenancy Branch