



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Cyclone Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for a rent reduction - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to a reduction of past rent?

Are the Tenants entitled to compensation for their moving costs?

Are the Tenants entitled to recovery of their filing fee?

Background and Evidence

The tenancy under written agreement started on November 15, 2015 and ended on May 29, 2019. The original rent of \$1,250.00 was payable on the first day of each month.

As of November 1, 2017 rent was \$1,296.25 was payable and during the last year of the tenancy rent of \$1,328.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$625.00 as a security deposit and \$625.00 as a pet deposit. The Tenants provided their forwarding address at move-out on May 29, 2019. The Landlord continues to retain the security deposit.

The Tenants state that since the onset of the tenancy the sliding door, their main emergency exit, would come off the tracks. The Tenants state that in 2016 the door was repaired, mold was found and the carpet was removed. The Tenants state that the door continued to come off the tracks and would frequently result in the Tenants being locked outside the unit so the Tenants would have to use a tool to get the door back on the tracks in order to enter. The Tenants state that the door repair usually took the Landlord up to 24 hours to repair during the week and was never repaired over any week-ends. The Tenant states that the Landlord continued to make minor repairs but did not replace the door, rollers and tracks until May 2, 2019. The Tenants state that the Landlord told the Tenants that the door kept requiring repair due to the misuse of the door. The Tenants state that at the early part of the tenancy the Landlord's maintenance person told them that the door had been problematic since before their tenancy and that the Landlord was aware that the door required replacement. The Tenants state that after the door was fully replaced in May 2019 there was no further problems.

The Tenants state that during either 2015 or 2016 the roof was replaced. The Tenants state that in February 2017 mold appeared around the back door of the unit. The Tenants state that the mold also appeared around most of the windows in the unit, on the ceiling of their child's bedroom, and in the bathroom. The Tenants state that the mold was repeatedly reported and that the Landlord only cleaned the windows each time the mold was reported and simply washed and painted over the ceiling. The Tenants state that the mold continued to reappear to the end of the tenancy. The Tenants state that the unit continually smelled of mold, dampness and borax. The Tenants state that the windows leaked and believed that they required replacement. The Tenants state that they were told to remove the bathroom caulking after which the Landlord would then replace the caulking. The Tenants state that they did not remove the caulking. The Tenants state that on April 30, 2019 the Tenants asked the Landlord in writing to have the unit professionally inspected for dangerous mold as the

maintenance person told the Tenants that the mold was “black mold” and that the mold should not be cleaned without wearing face masks. The Tenants state that the maintenance person did not wear face masks when cleaning the mold. The Tenants state that they gave their notice to end the tenancy on May 1, 2019 and that no inspection was done prior to their move-out. The Tenants state that the family all experienced health problems from the mold. The Tenants confirm that no medical reports in relation to the presence of mold causing the health problems were provided.

The Tenants claim a global sum of \$5,500.00 and state that this sum is based on a rental reduction in the equivalent of three months’ rent and moving costs of \$1,500.00. It is noted that no monetary order worksheet was provided detailing the costs claimed and no invoices were provided to support moving costs.

The Landlord states that the door was replaced in 2016. The Landlord provides an invoice dated September 13, 2016 showing that tracks, rollers and glass were replaced. It is noted that the invoice sets out these repairs at an address that is not the dispute address. The Landlord states that each time the Tenants reported the issue the door was repaired. The Landlord states that the “glass people” told the Landlord that the door was being damaged by the Tenants misuse of the door such as slamming the door. The Landlord states that after the door replacement the rollers for the door was never inspected for damage and that each time repairs were made there were no problems with the rollers or the tracks.

The Landlord states that the roof had been replaced due to leaks and that no mold was present at the time of its replacement. The Landlord states that the unit was inspected by mold professionals on February 20, 2017 but that there was no copy of the inspection report as the company lost it. The Landlord states that it is unknown whether the report was ever provided to the Landlord. The Landlord states that no harmful mold was found and points to a letter from the company indicating that after taking a moisture reading nothing of concern was found. The Landlord states that the mold was always

cleaned by the Landlord when reported and that there was no leak from the windows. The Landlord states that the windows only formed condensation from the humidity level in the unit and that the Tenants were told to reduce the humidity and clean the windows. The Landlord states that the ceiling mold was caused by leak from the roof and that shingles were replaced to repair the leak. The Landlord states that there was nothing dangerous with the mold and that it just required cleaning. The Landlord states that they did not fail to maintain the unit, that the Tenants did not provide any supporting evidence of any danger from the mold, and that other tenants in the four plex have never complained of mold. The Landlord states that the amount being claimed by the Tenants is not based on anything realistic.

The Tenants state that the door was never replaced in 2016. The Tenants state that they used an air conditioner to reduce the humidity during the summer months since April 216. The Tenants state that the Landlord is not a mold expert and that the Landlord failed to obtain a professional report that there was no harmful mold present.

Analysis

Section 65(1)(f) of the Act provides that if a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. Section 31(1) of the Act provides 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.

The door repair invoice sets out an address that is not the dispute address. For this reason and given the Tenants' evidence of the door's operation and the undisputed evidence of its use as an emergency exit, I find on a balance of probabilities that the door was never replaced and was an issue from the onset of the tenancy creating a risk in case of emergency. However, it is undisputed that the Landlord made repairs to the

door when asked. While the Tenants give evidence that the door was sometimes not repaired over a week-end, the Tenants also give evidence that they used a tool to open the door indicating that any loss of use of the door, while waiting for repairs, was brief. I find therefore that the Tenants have not substantiated a reduction in the value of the tenancy for the door issues.

While the Landlord gives evidence of an inspection and moisture reading in relation to the presence of mold, there is no evidence to support that a moisture reading will determine whether the presence of such mold is dangerous to human health. While I found the Landlord's evidence of investigating the harm that may be caused from the presence of the mold to be somewhat casual, I also consider that the Tenants never sought any relief during the tenancy by making a claim for repair orders or a professional inspection in relation to the type of mold present. While it is clear that mold was in the unit and accepting that the Tenants experienced illnesses while the mold was recurring, without medical evidence to support that these illnesses were caused by the presence of the mold, I cannot find that the Tenants have provided sufficient evidence of causation for the illnesses.

Given the lack of evidence that the mold was harmful and the undisputed evidence that the Landlord made repairs in relation to the mold whenever it was reported, I find on a balance of probabilities, that the Tenants have not substantiated that the Landlord failed in its obligations to maintain the unit. While it appears that the Tenants may have undertaken some cleaning themselves and while I accept that there would be residual odors from the cleaning, this is evidence of inconvenience and discomfort and not evidence that the presence of mold resulted in the loss of use of any part of the rental unit. As there is no evidence of any loss of use of any part of the rental unit prior to the end of the tenancy, I find that the Tenants have not substantiated an entitlement to a reduction in the value of the tenancy in relation to the mold. For the above reasons I dismiss the Tenants claim for a past rent reduction.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that costs for the damage or loss have been incurred or established. As the Tenants have not substantiated that the Landlord breached the Act or tenancy agreement causing them to move and have not provided any evidence of actual costs, I dismiss the claim for moving costs.

As the Tenants' claims have not been successful I decline to award recovery of the filing fee and in effect the Tenants' application is dismissed in its entirety.

Conclusion

The application is dismissed.

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: June 17, 2019

Residential Tenancy Branch