



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on May 02, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant and Landlord appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all oral testimony of the parties and all documentary evidence. I have only referred to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

The Tenant sought \$35,000.00 in compensation due to mold and rodent infestation in the rental unit which resulted in significant deterioration of the Tenant's health and quality of life.

Written tenancy agreements were submitted as evidence. There was no issue that there were tenancy agreements between the Landlord and Tenant in relation to the rental unit. The tenancy started December 01, 2016. The parties agreed rent was \$1,800.00 per month at the start of the tenancy and \$1,906.50 at the end of the tenancy. The parties agreed the tenancy ended March 01, 2019.

The Tenant provided the following testimony and submissions. The Landlord and owners of the rental unit did not keep it in good condition. The rental unit was infested with rodents and had mold. She gave the owners a letter about these issues February 01, 2019. Repairs to the rental unit were not done in a timely manner. The Landlord failed to provide and maintain safe and sanitary living conditions in the rental unit.

The Tenant provided the following further testimony and submissions. The photos submitted show there were feces and urine around the rental unit from rodents. The photos show dead rodents in the rental unit. The photos were taken in September and October of 2018. There were rodents in the rental unit for several weeks before the Landlord addressed this issue. She had to search for and contact an exterminator. Emails about this have been submitted. The exterminator attended but could not fix structural damage. As shown on the exterminator report submitted, the exterminator indicated that a water damaged wall needed to be replaced as it was crumbling and pests could chew through it. The wall was never replaced.

The Tenant submitted that the rodent infestation affected her health as the rodents were all over the rental unit and, for example, got on the counter. The Tenant acknowledged that there is nothing in the medical documents submitted showing the rodent infestation affected her health. The Tenant submitted that the rodents were disgusting.

The Tenant testified that she first contacted the Landlord about the rodent issue verbally in the winter of 2017. She testified that she first contacted the Landlord in writing about the issue in the October 20, 2018 email submitted in evidence. The Tenant acknowledged that the rodent infestation was taken care of by the exterminator.

The Tenant provided the following further testimony and submissions. In relation to the mold issue, there were plumbing issues in the rental unit. This is supported by the plumbing invoice submitted. The photos submitted show there was mold in the rental

unit, primarily in the garage. She is pretty certain the mold extended to the drywall in the rental unit.

The Tenant had submitted a document named "Repairs/Cleaning/Keys" dated November 30, 2016. It states, "Mold on master bedroom wall and any wall it may be on". The Tenant testified that this is an email that was sent to the Landlord prior to her moving into the rental unit. It is not evident from the document itself that it is an email. There is nothing in the document showing it was sent to the Landlord or received by the Landlord. The Tenant testified that she dealt with the mold referred to in the email herself with bleach.

I understood the Tenant to testify that the next time she raised the mold issue with the Landlord in writing was in the February 01, 2019 letter. The Tenant testified that she also verbally told the Landlord about the mold issue. I asked the Tenant about letters in evidence dated January 16, 2019 regarding the rodent and mold issue. The Tenant testified that these were emailed to the Landlord.

The Tenant testified that the exterminator who attended the rental unit for the rodent issue told her there was mold in the rental unit and that it was black mold. The Tenant testified that the exterminator contacted the Landlord about this and provided the Landlord with the exterminator report in November of 2018.

The Tenant acknowledged that the only evidence submitted to support her testimony that there was black mold in the rental unit are the photos. The Tenant acknowledged that there is no evidence from a professional about the mold issue.

The Tenant provided the following further testimony and submissions. She realised something was wrong with her health in August of 2018. She had had a cough for some time prior to this date. She is a professional musician and could not take a full breath of air. She went to the clinic due to fatigue and foggiess. She was referred to a lung specialist. She has submitted her health records.

The Tenant referred to doctors' letters and notes submitted in evidence. She submitted that the letter from doctor T.F. confirms her symptoms were caused by exposure to mold.

The Tenant referred to health records showing a positive ANA test. She testified that this occurs when your body is attacking itself because of some unknown pathogen in it. She testified that an ANA test shows inflammation in the body. The Tenant could not

point to where in the evidence there is a link shown between the ANA test results and exposure to mold.

The Tenant acknowledged that the doctors were not independently aware of mold in the rental unit. The Tenant acknowledged that the opinions outlined in the doctors' letters are based on her account of symptoms and her advising them that there was mold in the rental unit.

I asked the Tenant about a note made by one of the doctors stating that the Tenant will have "allergy skin testing for mold" done. The Tenant testified that there is no such test. The Tenant testified that there are no tests that can be done to confirm the link between illness and mold exposure and that doctors rely on time and whether changing your environment affects the symptoms. The Tenant referred to the letter from doctor T.F. in evidence which states that her symptoms are due to mold because they improved when she moved.

The Landlord provided the following testimony and submissions. He and the owners responded to the Tenant within a reasonable time in relation to the rodent issue. The first time he heard of a rodent issue was two years into the tenancy. There was no rodent problem when the Tenant moved in. The Tenant verbally advised him of the rodent problem in October and followed up with the email in evidence. He and the owners purchased rat poison, traps and wool right away to address the issue. An exterminator was subsequently called. The exterminator did three treatments, the first being in November, which dealt with the rodent problem.

The Landlord denied that the exterminator report was ever sent to him and denied that the exterminator said anything to him about replacing a water damaged wall.

The Landlord provided the following further testimony and submissions. In relation to the mold issue, the Tenant only advised him of this issue approximately one month before she asked to end the tenancy. He told the Tenant he would look into the issue. The plumbers never said anything about mold in the rental unit. He received the January 16, 2019 email from the Tenant but not the February 01, 2019 letter.

The Landlord did not acknowledge receiving the November 30, 2016 email from the Tenant about mold on the master bedroom wall.

The Landlord denied that there was or is mold in the rental unit. He submitted that he has kept up with leaks and repairs in the rental unit.

I have reviewed all the evidence in this matter and note the following.

The exterminator report submitted shows the exterminator attended the rental unit November 22, 2018 and January 14, 2019. It indicates that a wall is water damaged and should be replaced. It does not state anything about mold.

The email correspondence submitted shows the Tenant emailed the Landlord about the rodent issue October 20, 2018. The email supports that the owners brought the Tenant traps and poison a week prior to October 31, 2018. The Landlord emailed the Tenant November 12, 2018 saying the Tenant could book an exterminator and that he would pay for this.

The exterminator "Summary of Service" submitted mentions replacement of the water damaged wall. It does not mention mold.

The medical documents submitted include the following:

- A letter from doctor T.F. dated August 27, 2018 about a visit with the Tenant. This does not mention mold.
- A letter from doctor T.F. dated January 15, 2019 about a follow up visit with the Tenant. It states, "she and her partner noticed excessive mold in their rented apartment. She states since she moved to the place she started having a cough. It is unclear what type of mold it is...She is concerned that her cough might be related to the presence of mold in the apartment." The letter further states, "To investigate this further she will have allergy skin testing for mold on her next visit." The letter goes on to note "another possibility for her chronic cough".
- A letter from doctor T.F. dated February 11, 2019 about a visit with the Tenant. This does not mention mold.
- A letter from doctor T.F. dated June 26, 2019. It states it is a "correction followup note to [the] report from November 06, 2018 in relation to the Tenant". It outlines symptoms reported by the Tenant to the doctor during a visit November 06, 2018. It states, "It appears all her symptoms were related to black mold present in her apartment at that time...As you are aware, once she moved from that apartment her symptoms improved significantly. This proves the correlation between her symptoms and the black mold exposure...I also have corrected my

office notes to reflect that [the Tenant] was very unwell when she was seen at that time.” The letter lists symptoms the Tenant was experiencing on the November 06, 2018 visit and states “Please make these corrections on your file notes as well.”

- A report dated June 12, 2019 from doctor J.C. about a visit with the Tenant. It states that the Tenant has noted an improvement in symptoms since her last visit and is no longer living in a moldy home. It states that the Tenant stayed in a moldy home for the previous three days and noted symptoms returning.

The Tenant submitted further medical documents which were not explained to me. The relevance of these is not clear.

The Landlord submitted an invoice from the exterminator. This does not state anything about replacing a water damaged wall or mold.

Analysis

Section 7 of the *Residential Tenancy Act* (the “Act”) states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the *Act* sets out the obligations of landlords to repair and maintain a rental unit and states:

32 (1) 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.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules of Procedure, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Rodent Infestation

Given the testimony of the parties, and evidence submitted, there is no issue that there were rodents in the rental unit from at least October to November of 2018.

I find based on the email submitted that the Tenant notified the Landlord of the rodent issue around October 20, 2018. I do not accept that the Tenant notified the Landlord of this issue earlier in the absence of evidence showing this.

I find based on the email submitted that the Landlord or owners purchased traps and poison at some point between October 20, 2018 and October 31, 2018. I do not accept that there were rodents in the rental unit for several weeks before the Landlord addressed the issue. I find the Landlord or owners started to address the rodent issue within 11 days of being advised of the issue. I find the initial steps taken to be reasonable.

Based on the email submitted, I find the Landlord told the Tenant on November 12, 2018 that she could have an exterminator attend the rental unit and that he would pay for this. This was only 23 days after the Tenant notified the Landlord of the rodent issue. I do not find this delay unreasonable given the Landlord or owners also took initial steps within this 23-day period to address the issue. Further, I do not find the timeline unreasonable given the nature of the rodent issue. The evidence does not show that this issue was urgent or an emergency. I accept that it was unpleasant and unsanitary and had to be dealt with; however, I find the timeline reasonable.

I find based on the evidence relating to the exterminator that the exterminator attended the rental unit November 22, 2018. This was only one month and two days after the Tenant advised the Landlord of the rodent issue. I find this timeline reasonable given the points made above.

The evidence relating to the exterminator shows that the exterminator was addressing the rodent issue from November 22, 2018 on. The parties agreed the exterminator dealt with the rodent issue such that it did not continue or reappear. Hiring the exterminator was a reasonable response to the issue. I do not find that the Landlord was required to do more than this.

Given the above, I am not satisfied the Landlord breached section 32 of the *Act* as I am not satisfied the Landlord failed to take reasonable steps to address the rodent issue in a timely manner once it was brought to his attention.

The Tenant submitted that the Landlord failed to replace the water damaged wall. I do not find this relevant to the compensation issue. The parties agreed the exterminator dealt with the rodent issue and that it did not continue. Any failure by the Landlord to replace the water damaged wall did not result in further rodents getting into the rental unit. The Tenant is seeking compensation for a rodent infestation. I find this ended with the exterminator.

I am not satisfied the Landlord breached the *Act* in relation to the rodent issue and decline to award the Tenant compensation for this issue.

Mold

The Tenant testified that there was mold in the rental unit that affected her health. The Landlord denied that there was or is mold in the rental unit. The Tenant has the onus to prove on a balance of probabilities that there was mold in the rental unit that affected her health.

Evidence of plumbing issues in the rental unit is not sufficient to prove there was mold in the rental unit as mold does not necessarily occur whenever there are plumbing issues in a home.

The photos submitted are not sufficient to prove that there was mold in the rental unit that affected the Tenant's health. Some of the photos do not appear to show mold. I cannot tell from the photos whether the markings shown are mold. If it is mold shown in the photos, I cannot tell what type of mold it is or whether it is toxic mold.

The November 30, 2016 email mentioning mold on the master bedroom wall is not sufficient evidence that there was mold in the rental unit as this is a note from the Tenant, not something agreed to or acknowledged by the Landlord.

I do not accept the testimony of the Tenant that the exterminator told her there was black mold in the rental unit. There is no evidence submitted showing this occurred. There is no mention of mold in the documents from the exterminator submitted. The only other evidence of mold in the rental unit are the medical documents. These are not sufficient to prove that there was mold in the rental unit for the following reasons.

The doctors did not have independent knowledge of there being mold in the rental unit. The comments about mold in the rental unit are based on what the Tenant told them.

I do not see where in the medical documents it shows that the opinions of the doctors about exposure to mold being the cause of the reported symptoms are based on independent tests done to support or confirm this. I understood the Tenant to say there are no tests that can confirm the reported symptoms are caused by mold exposure. This seems to be contradicted by the note from doctor T.F. stating that the Tenant will undergo allergy skin testing for mold.

I place little weight on the evidence from doctor T.F. In the June 26, 2019 letter, doctor T.F. states that it is a correction to notes taken November 06, 2018. I do not have the November 06, 2018 notes and therefore do not know what the original notes said. However, I am not satisfied that further notes made more than seven months after doctor T.F. met with the Tenant are reliable. The purpose of taking notes contemporaneously with an event is to have an accurate record of what occurred so that a person does not have to rely on their memory which becomes less comprehensive and less accurate over time. In the absence of an explanation about why doctor T.F. corrected his or her original notes, or how doctor T.F. recalled symptoms of a patient he or she saw more than seven months prior, I do not find the June 26, 2019 letter to be a reliable piece of evidence.

Given the above, I do not find the medical documents sufficient to prove there was mold in the rental unit.

The Tenant has not submitted an assessment of the rental unit from a professional qualified to identify and asses mold. Such an assessment can be done to determine whether there is mold in the rental unit, where in the rental unit it is and what type of mold it is. This is the type of evidence that will usually be required on an application of this nature. In the absence of such evidence, and in the absence of other compelling evidence showing there was mold in the rental unit, the Tenant has failed to prove this.

Given I am not satisfied there was mold in the rental unit, I am not satisfied the Landlord failed to comply with section 32 of the *Act*. Nor am I satisfied the Tenant is entitled to compensation for the mold issue.

Given the Tenant was not successful in this application, I decline to award her reimbursement for the filing fee.

The Application is dismissed without leave to re-apply.

Conclusion

I am not satisfied the Landlord breached the *Act* and therefore am not satisfied the Tenant is entitled to compensation. Given the Tenant was not successful in this application, I decline to award her reimbursement for the filing fee. The Application is dismissed without leave to re-apply.

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: August 15, 2019

Residential Tenancy Branch