



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Chartwell Construction LTD/Royal View
Apartments and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC RP FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on November 22, 2019. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the *Act*).

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and evidence. The Tenants confirmed they received the Landlords' evidence within the acceptable time frame.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not repairs are required, given the allegations of mold (health and safety). As a result, I exercised my discretion to dismiss all of the grounds the Tenants applied for, with leave to reapply, with the exception of the following claim:

- Are the Tenants entitled to an order requiring the Landlord to make repairs to the rental unit?

Issue(s) to be Decided

- Are the Tenants entitled to an order requiring the Landlord to make repairs to the rental unit?

Background and Evidence

On the Tenants' application, they stated that they are seeking repairs to address the mold, the grout in the tile, and ventilation in the bathroom. The Tenants also uploaded a video of moisture around the windows in the suite, and are asking for this to be fixed.

The Tenants stated that they have lived in the rental unit for several years, and the last time the tile in the bathroom was redone was in 2014. The Tenants feel the grout has since become affected by mold, is now stained, and needs to be redone. The Landlord stated that they are willing to send a tile contractor into the unit and have the discolored grout/silicone resurfaced. The Landlord stated they believe a good cleaning could remedy this grout issues, but they are willing to resurface it to appease the Tenants.

The Landlord committed to having the tile grout and silicone perimeter resurfaced, where it is discolored, and do so forthwith. The Landlord will reach out to their contractor as soon as possible and begin the process. The Landlord stated they will provide proper notice, and request that the Tenants not interfere with their work. The Tenants were satisfied and agreed with this remedy for the tiles.

The Tenants also stated that the bathroom fan is not powerful enough, and is over 10 years old. The Tenants provided videos where she held up a piece of paper several inches below the fan, but the suction would not hold up the paper. The Tenants stated that the fan is noisy, old and inefficient. The Landlords stated that they had their electrician come and inspect the fan on October 31, 2019, and he opined that the fan is

functioning correctly and does not need replacement. The letter from the electrician was provided into evidence. The Tenants believe the poor fan is causing the moisture issues and they allege it is causing mold.

The Tenants also expressed that they want the leaky windows repaired. They provided a video into evidence, which shows water dripping down the inside of the window, and pooling. This video shows that it was recorded on October 19, 2019. In the Landlords' written submission, they state they have done some exterior repairs and caulked around the windows over the past years. They have also attempted to inspect the windows as recently as October 2019, but they stated the Tenants have been difficult. The Landlord indicated the handyman is hesitant to deal with the Tenant because she is aggressive.

Analysis

A party that makes an application against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

With respect to the Tenants' requests for repairs, I turn to section 32 of the Act:

Landlord and tenant obligations to repair and maintain

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.

Tile Grout/Caulking

I note the Landlord and the Tenants agreed in the hearing that the Landlord would have a contractor come, inspect, and resurface the discolored grout in the tile of the shower. The Landlord would also resurface the discolored silicone caulking around the bath tub. The Tenants agreed they would not question the contractors credentials, nor would they otherwise interfere with this repair, as long as the Landlord gave proper notice to enter. The Landlord agreed to this.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order.

Given the agreement reached between the parties during the proceedings, I find that the parties have settled the tile issue and the Landlord is ordered to complete the repairs, as agreed upon, and as soon as practicable. I find there is insufficient evidence there is mold present, and I find there are no further orders required to deal with the allegations of mold, or to have any remediation done for this issue.

Bathroom Fan

I note the Tenants feel the fan is noisy, old, and ineffective. However, I note that it is still functional. I note the Landlord had an electrician inspect the fan and he opined that it is functioning and not in need of replacement. Ultimately, I do not find the Tenants have sufficiently demonstrated that the fan requires replacement and that the fan, in its current state, is in breach of section 32 of the *Act*.

Windows

I note the windows are older single pane windows. This type of window is prone to condensation, and this is not uncommon in older buildings. A building of this age and character, and with this type of window, should be expected to have some condensation. However, it appears based on the video uploaded into evidence, that there may be more than just condensation. It appears there were some drips and pooling of water which may be related to rainy conditions. I note the Landlord has taken some steps to ensure windows don't leak in the past (the listed some work they did in the past). I also note there appears to be dysfunction between the Tenants and the handyman who has come to attend to some of their issues in the past.

Ultimately, given the evidence provided, I find the Tenants have sufficiently demonstrated, in their video from this October, that there may be water issues around one or more of the windows, above and beyond what should be expected in terms of condensation on an older window.

As such, I order the Landlord to have all the windows within the rental unit inspected, by a qualified contractor of their choosing, within 1 month of the date of this decision. If leaks are discovered, the Landlord must fix the leaks forthwith. As long as the Landlord

is providing the Tenants with proper notice to come and assess the windows, the Tenants are not able to deny entry or otherwise interfere with this assessment.

The parties are encouraged to work together on the remaining issues and to not interfere with each others' rights and obligations under the Act.

Given the Tenants were only partly successful with this application, I decline to award the recovery of the filing fee.

Conclusion

The Landlord is ordered to address the tile grout/caulking in the bathroom, as laid out above. The Landlord is also ordered to have the windows of the unit inspected, as laid out above, and have the necessary repairs done if leaks are detected or discovered. The Landlord is not required to replace the bathroom fan.

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: November 22, 2019

Residential Tenancy Branch