Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDCT, RP, RR

Introduction:

A hearing was convened on September 17, 2019 in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for a rent reduction, and for an Order requiring the Landlord to make repairs.

The Tenant stated that on July 22, 2019 the Dispute Resolution Package was sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged that this package was received by the Landlord.

On July 15, 2019 the Tenant submitted a Monetary Order Worksheet to the Residential Tenancy Branch. The Tenant stated that this document was served to the Landlord with the Dispute Resolution Package. The Agent for the Landlord stated that this document was not received. As all of the information contained on the Monetary Order Worksheet was provided to the Landlord on the Application for Dispute Resolution, I find that this document is not needed for these proceedings.

On August 29, 2019 the Tenant submitted additional evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on August 28, 2019. The Agent for the Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On September 10, 2019 the Landlord submitted photographs to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was personally served to the Tenant. The Tenant acknowledged receipt of this evidence. The Tenant stated that the photographs served to her are black and white photographs and, as such, are not very clear. The Agent for the Landlord stated that color photographs were

submitted to the Residential Tenancy Branch and she does not dispute that black and white photographs were served to the Tenant.

Rule 3.7 of the Residential Tenancy Branch Rules of Procedure require parties to serve documents and photographs to the other party that are identical to the documents and photographs submitted to the Residential Tenancy Branch. As the photographs served to the Tenant by the Landlord are inferior to the photographs submitted to the Residential Tenancy Branch, the Landlord's photographs were not accepted as evidence for these proceedings. I find it would be unfair to consider those photographs, given that the photographs submitted to the Residential Tenancy Branch are clearer.

There was insufficient time to conclude the matter on September 17, 2019. The hearing was therefore adjourned. The hearing was reconvened on December 10, 2019 and was concluded on that date.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

All documentary evidence accepted as evidence for these proceedings has been reviewed, although it is only referenced in this decision if it is directly relevant to my decision.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for being unable to use the rental unit?
Is the Tenant entitled to compensation for aggravated damages?
Is there a need to issue an Order requiring the Landlord to make repairs?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began in July of 2010;
- rent was increased to $793.00 on July 01, 2019;
- prior to July 01, 2019, the rent was $774.00;
- the Tenant was given $30.00 and free rent for the month of April of 2018, in compensation for the inconvenience of a leak in her rental unit;
- the Tenant continues to pay rent and no rent is currently due.

The Tenant stated that:

- on March 02, 2018 she noticed a 2"X2" puddle of water on her bathroom floor;

- she did not notice water leaking again until March 18, 2018;
- she left messages for the Landlord regarding the water on March 02, 2018 and March 05, 2018;
- an agent for the Landlord viewed the suite on March 08, 2018;
- neither a contractor or a plumber contacted her on March 08, 2018;
- on March 08, 2018 an agent for the Landlord told the Tenant the problem would be repaired on March 30, 2018;
- on March 17, 2019 an agent for the Landlord phoned her and again told the Tenant the problem would be repaired on March 30, 2018;
- on March 18, 2018 she observed water running down the bathroom wall and she left a message for the Landlord;
- on March 19, 2018 she noticed the carpet was wet in her hallway and dining room and she called the emergency line for the Landlord;
- on March 21, 2018 a plumber attended;
- she was never told repairs would be made on March 19, 2018;
- on March 19, 2018 a contractor came to her rental unit and asked where the leak was occurring;
- she was expecting a plumber to attend so she was angry that a contractor had been sent;
- the contractor left without making any repairs;
- on March 21, 2018 the plumber cut a hole in the bathroom ceiling and made some repairs;
- she did not cut a hole in the ceiling;
- the leak was fully repaired on March 28, 2018;
- repairs to the drywall commended on, or about, March 30, 2018;
- repairs to the drywall were completed on, or about, April 01, 2018;
- the drywall was painted sometime during the first week of April of 2018;
- prior to the leak she observed a substance on the wall that she now believes was mold;
- once the drywall was removed as a result of the leak, she noticed mold inside the wall;
- there was a strong smell of mold after the leak;
- there is still a strong smell of mold in the rental unit; and
- she stopped staying in the rental unit on July 16, 2019 because of the presence of mold.

The Agent for the Landlord stated that:

- an agent for the Landlord viewed the suite on March 08, 2018;
- she does not know why the agent attend the unit on March 08, 2018 but thinks it is reasonable to assume it was in response to the messages left by the Tenant;
- on March 08, 2018 the Landlord arranged to have a contractor and plumber contacted the Tenant directly for the purposes of fixing the leak:
- on March 08, 2018 the Tenant would not let the contractor and plumber into the unit;

- on March 17, 2018 an agent for the Landlord viewed the rental unit again;
- on March 17, 2018 an agent for the Landlord informed the Tenant that repairs would commence on March 19, 2018;
- on March 19, 2018 the Tenant reported that the carpet was wet in the hallway and dining room;
- on March 19, 2018 a contractor fixed a toilet that was leaking in the suite above this rental unit, which was believed to be the source of the water egress;
- on March 19, 2018 a contractor went to the rental unit but the Tenant would not allow him to make repairs;
- on March 21, 2018 a plumber made a temporary repair;
- when the plumber attended the unit on March 21, 2018 the Tenant had already cut an access hole into the ceiling;
- on March 28, 2018 the plumber completed the repairs; and
- there is no smell of mold in the unit.

The Property Manager stated that:

- he thinks the drywall was fully repaired in the first week of April of 2018; and
- mold was not found during the repairs.

The Tenant stated that she sent the Landlord a letter, dated July 16, 2019, in which she informed the Landlord she was no longer living in the rental unit. In my interim decision the Tenant was given authority to submit a copy of this letter to the Residential Tenancy Branch, which she did not do. The Agent for the Landlord stated that it is entirely possible that this letter was served to an agent for the Landlord who is no longer working for the Landlord.

The Tenant submitted a report from a mold inspection company, dated August 21, 2018. The report refers to mold samples that were reportedly taken in the rental unit on March 26, 2018; that the samples were presented to mold inspector on August 21, 2018; that the samples indicate mold levels that pose a health risk; and that the mold should be remediated by appropriate professionals.

The Tenant stated that she took the samples referred to in this report on March 26, 2018 and that the samples were pieces of drywall taken from her bathroom.

The Agent for the Landlord stated that her research shows mold samples should be taken by a person trained in taking such samples, rather than a layperson such as the Tenant. The Property Manager stated that there is no evidence the samples were even taken from the rental unit.

The Tenant is seeking a rent refund of $11,571.00 because she believes the rental unit was uninhabitable due to mould. She is seeking the rent refund, in part, because she has not stayed in the rental unit since early April due to her concerns about mold. She stated that she has been rendered homeless; has been “couch surfing”; and has been staying in a homeless shelter, all of which has had a psychological impact on her. She is seeking the rent refund, in part, because she has developed asthma symptoms; she has been dry heaving; and has had a bleeding nose.

The Tenant submitted documentation from a medical practitioner who has concluded that she has been rendered homeless by the condition of the rental unit; that mold was detected in the rental unit; and since being exposed to the unit she has developed asthma and other medical symptoms.

The Tenant is seeking compensation for aggravated damages. She contends the Landlord knew, or should have known, that the mold would have a negative impact on her.

The Landlord contends that the Tenant should not receive a rent refund or aggravated damages because there was no mold in the unit and the Tenant did not have to live elsewhere. The Landlord contends that the Tenant could simply have ended the tenancy if she did not believe the unit was suitable. The Tenant stated that she did not end the tenancy because the rent was reasonable and she would be unable to find similarly priced accommodations.

The Property Manager stated that the rental unit was inspected on September 10, 2019 by an environmental inspection company, which determined that there were no abnormal levels of mold in the unit. The Landlord submitted a copy of this report and a copy of it was served to the Tenant, in accordance with my interim decision.

The Property Manager stated that the Landlord has not had the rental unit re-tested for mold since the inspection on September 10, 2019 although the environmental inspection report recommended the unit be re-tested on one month.

The Property Manager stated that the unit was not re-tested, in part, because the information provided to them by the contractor who also inspected the unit on September 10, 2019 detected no abnormal moisture levels, which satisfied the Landlord that mold will not grow in the unit. He stated that the unit was also not re-tested because the Landlord believes the Tenant may attempt to facilitate mold growth to support her monetary claim.

The Property Manager stated that the rental unit was inspected on September 10, 2019 by a contractor who is skilled in detecting abnormal moisture levels and that he determined that the humidity levels in the unit are within industry standards. The Landlord submitted a written submission from this contractor and a copy of it was served to the Tenant, in accordance with my interim decision.

In response to the report from the contractor, the Tenant stated that no abnormal moisture levels were detected in the rental unit on September 10, 2019 because she was not living in the rental unit. She stated that when she moves back into the unit, she expects the moisture levels to increase because there is no heater in the bathroom and the bathroom fan will not sufficiently ventilate the bathroom after she showers.

The Property Manager stated that the rental unit was not tested for mold prior to September 10, 2019 as the contractor who repaired the rental unit in March/April of 2018 assured them there was no mold and the Landlord did not believe there was mold in the unit.

The Tenant is seeking to recover the $367.50 she paid to have the samples tested for mold. The Landlord contends that the tests were not required and that the Landlord should not be responsible for those costs.

The Tenant is seeking to recover $238.40 for hydro costs. The Tenant stated that she is required to pay for hydro costs incurred during her tenancy but she does not think she should have to pay for hydro costs incurred while she was not living in the unit. The Landlord contends that the Tenant could have lived in the rental unit and is not, therefore, entitled to compensation for hydro costs.

The Tenant is seeking an Order requiring the Landlord to replace all drywall, insulation, and carpet that may be contaminated by mold.

The Property Manager stated that the Landlord does not believe that any of these areas are contaminated and, as such, they do not intend to repair or replace these items. The Agent for the Landlord stated that the Landlord cleaned the carpets after the leak/drywall was repaired, at the request of the Tenant. She stated that the Landlord works regularly with this cleaning company and she believes the Landlord would have been informed if the carpets were contaminated.

The Tenant is seeking compensation for a chest that was damaged by the water that leaked in March of 2018. The Tenant stated that the chest was sitting on the carpet and that the chest was damaged when water leaked down the wall onto the carpet. The Tenant submitted a photograph of the underside of the chest, which appears to be damaged by water. The Tenant submitted a video of the carpet, which appears to be discolored where the chest had been sitting. The Tenant stated that she did not notice the damage to the chest or the wet carpet until March 18, 2018 or March 19, 2018.

The Tenant stated that the chest was made for her by her mother.

The Property Manager stated that article 15 of the tenancy agreement requires a tenant to have tenant insurance. The parties agree that the Tenant did not have tenant insurance.

The Advocate for the Tenant argued that if the Landlord had repaired the leak in a timely manner, the Tenant's chest would not have been damaged, and there would have been no need to make an insurance claim.

At the first hearing the Property Manager stated that the Landlord wished to call two witnesses. At the second hearing the Property Manager stated that these witnesses were no longer required as written reports from these witnesses have been accepted as evidence for these proceedings.

Analysis:

When making a claim for damages under a tenancy agreement or the *Act,* the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

On the basis of the testimony of the Tenant and in the absence of any evidence to the contrary, I find that the Tenant reported a leak in her bathroom on March 02, 2018.

On the basis of the undisputed evidence I find that a plumbing leak was discovered; that the leak was fully repaired by March 28, 2018; and that the drywall was repaired and painted in the first week of April of 2018.

Section 32(1) of the *Residential Tenancy Act (Act*) requires landlords to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. I find it reasonable to conclude that section 32(1) of the *Act* requires landlords to repair plumbing leaks. As the plumbing leak that was reported on March 02, 2018, the leak was repaired, and the consequential drywall damage was repaired, I find that the Landlord complied with section 32(1) of the *Act* in regard to the leak.

Section 28 of the *Act* stipulates that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 6, with which I concur, reads, in part:

> A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.
>
> In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

In some circumstances I would find that a tenant's right to quiet enjoyment had been breached if a landlord did not repair a plumbing leak in a reasonably timely manner. Even if I concluded that this Tenant's right to quiet enjoyment of the rental unit was breached because the Landlord did not repair the leak that was reported on March 02, 2018 in a reasonably timely manner, I would not grant the Tenant compensation for that breach. I would not grant the Tenant any compensation for that breach because the Tenant has already been amply compensated for any inconvenience related to the leak and subsequent repairs. I find that the $30.00 and one month's free rent that Tenant received is more than generous compensation.

I find that the Tenant has submitted insufficient evidence to establish that harmful levels of mold were present in the rental unit at any time after the leak that occurred on March 02, 2018.

In adjudicating this matter, I have considered the report from a mold inspection company submitted in evidence by the Tenant, dated August 21, 2018. Although I accept the report's finding that the samples presented by the Tenant contained harmful levels of mold when they were presented to the author of the report on August 21, 2018, I also fully accept the Landlord's submission that the samples are not reliable as they were taken by the Tenant, rather than a qualified professional. Given that the samples were taken on March 26, 2018 and were not presented to the author of the report for almost five months, I cannot conclude that the samples represent the condition of the rental unit at the time the samples were taken. I find it entirely possible that any mold detected on those samples could have grown in the five months after they were taken from the rental unit.

In determining that there was insufficient evidence to establish that there was, or is, mold in the rental unit, I have placed no weight on the Tenant's submission that the unit still smells of mold. I placed no weight on that submission as there is no independent evidence to corroborate her claim that it smelled of mold after the repairs were completed. Conversely, in the environmental report submitted by the Landlord a seemingly independent expert witness declared that there was no musty odor when the unit was inspected on September 10, 2019.

In determining that there was insufficient evidence to establish that there was, or is, mold in the rental unit, I was influenced by the video and photographs submitted in evidence by the Tenant. Although some of the images submitted by the Tenant were of poor quality, I was unable to identify a substance that appeared to be mold in any of the images submitted by the Tenant, including the images that were very clear.

In determining this matter, I placed no weight on the medical documentation submitted in evidence. As there is no evidence that the medical practitioner ever visited the rental unit, I find it reasonable to conclude that the opinions expressed in that medical documents was based on information provided to the medical practitioner by the Tenant, who likely informed the practitioner that the rental unit was unsafe due to the presence of mold.

In determining this matter, I placed no weight on the hand written statements submitted by the Tenant, which appear to be written by a third party. Although this third party

reports observing mold and being impacted by the environment in the unit, this individual appears to have a personal relationship with the Tenant and cannot be considered an unbiased witness. More importantly, there is no evidence that this witness has the expertise to identify mold and I cannot conclude that the observations of the witness are more reliable than the information provided by the mold inspector and the contractor who inspected the unit on September 10, 2019.

As the Tenant has submitted insufficient evidence that there was, or is, mold in the rental unit, I find that she is not entitled to a rent refund. While I accept that the Tenant has not lived in the unit since April of 2018 because of her concern about mold, I find that her concern has not been substantiated. As her concern has not been substantiated, I find that her decision to not live in the rental unit is not compensable.

As the Tenant has submitted insufficient evidence that there was, or is, mold in the rental unit, I find that she is not entitled to aggravated damages as a result of the Landlord failing to remediate mold.

In adjudicating this matter, I was influenced by the evidence presented by the contactor who inspected the unit on September 10, 2019. In this report the contractor declared that he used a thermal imaging camera, a moisture detector, and conducted a visual inspection of the unit, after which he determined there were no moisture issues. I find that this report indicates that there were no elevated moisture levels in the unit when it was inspected on September 10, 2019, which supports my conclusion that the Tenant's concerns about mold in the rental unit are unfounded.

In adjudicating this matter, I have placed little weight on the Tenant's submission that moisture levels will increase when she moves back into the unit because there is no heater in the bathroom and the bathroom fan will not sufficiently ventilate the bathroom after she showers. I find this to be highly speculative. The Tenant has an obligation to take reasonable steps to ensure that mold does not accumulate in the bathroom. The Landlord also has the right to inspect the rental unit on a monthly basis to ensure the Tenant is complying with this obligation.

In adjudicating this matter, I was influenced by the environmental report submitted by the Landlord. Although this report indicates that when the unit was inspected on September 10, 2019, there was a slightly elevated level of one type of mold, it does not establish that the presence of mold in the unit presents a health hazard. The report also clearly indicates there are no visible signs of mold and no musty odors. I find that this

report refutes the Tenant's submission that the rental unit is uninhabitable due to mold and that there is still a smell of mold in the unit.

I find that the Landlord's decision not to re-test the rental unit for mold, in spite of the recommendation made in the environmental report, is reasonable. In the absence of any credible evidence to establish there are unsafe levels of mold in the unit or that there is a potential for mold to grow, I find that there is no reason for the Landlord to incur this expense.

I dismiss the Tenant's claim to recover the cost of mold testing. I find that the testing failed to establish the presence of mold in the rental unit. As the testing did not establish that the Landlord breached the *Act*, I cannot conclude that the Landlord would be obligated to pay for testing.

I dismiss the Tenant's claim to recover hydro costs. As I have concluded that the Tenant has failed to establish that the rental unit was uninhabitable, I find that she remains responsible for paying the hydro costs incurred during the tenancy.

As I have concluded that the Tenant has failed to establish the rental unit is contaminated by mold, I can find no reason to Order the Landlord to replace drywall, insulation, or carpet.

On the basis of the testimony of the Tenant, the photograph of the underside of the chest, and the image of the discolored area of the carpet where the chest was sitting, I find that the chest was damaged when water leaked onto the carpet. I find that this damage likely would not have occurred if the Landlord repaired the leak when it was first reported on March 02, 2018, as the evidence indicates the water did not spread to the carpet until approximately March 18, 2018. As the damage was directly related to a delay in repairing the initial leak, I find that the Landlord must compensation the Tenant for the damage to the chest.

In adjudicating this matter, I have placed no weight on the undisputed evidence that the Tenant did not have Tenant insurance, in spite of the article in the tenancy agreement that requires her to have it. I agree with the Tenant's submission that if the Landlord had repaired the leak in a timely manner, the Tenant's chest would not have been damaged, and there would have been no need to make an insurance claim.

I find that the Tenant submitted no evidence to establish the value of the chest. Although she describes it as a cultural chest that was made by her mother, in videos #13 and #15 it appears to be a metal clad chest that is available commercially.

Given that the Tenant contends the rental unit still smells of mold and the independent inspector concluded that it did not smell of mold when the unit was inspected in September of 2019, I do not find the Tenant to be a particularly credible witness. I therefore find her testimony that the chest was made be her mother is not sufficient to cause me to conclude that it was a cultural chest made by her mother, given that it appears to be a commercially available chest. I therefore find that she has failed to establish that the chest has value in excess of its commercial value.

In addition to establishing that a landlord was responsible for damaging a tenant's property, a tenant must also accurately establish the cost of repairing the damage, whenever compensation for damages is being claimed. I find that the Tenant failed to establish the cost of repairing or replacing the chest. In reaching this conclusion, I was strongly influenced by the absence of any documentary evidence that corroborates the submission that the chest is worth $3,000.00. When receipts or estimates of repair/replacement costs are available, or should be available with reasonable diligence, I find that a party seeking compensation for those expenses has a duty to present that evidence.

As the Tenant has failed to establish the cost of repairing or replacing the damaged chest, I dismiss her claim for the damaged chest.

Conclusion:

The Tenant's Application for Dispute Resolution 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 *Residential Tenancy Act*.

Dated: December 11, 2019

Residential Tenancy Branch