



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

RW appeared for the tenants, while AS testified on behalf of the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing and evidence. In accordance with section 89 of the *Act*, I find that the tenants were duly served with the landlord's application. All parties confirmed receipt of each other's evidentiary materials, and that they were ready to proceed.

Issues(s) to be Decided

Should any orders be issued against the landlord requiring emergency repairs of this rental unit?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began on June 1, 2019. Monthly rent is set at \$1,340.00, payable on the first of every month. The landlords collected a security deposit in the amount of \$650.00. The landlord testified that this was a fixed-term tenancy, while the tenants testified that they were never provided a copy of the tenancy agreement. The landlord agreed in the hearing to provide a copy of the tenancy agreement to the tenants.

The tenants applied for emergency repairs to this rental unit. The tenants are also requesting that the landlords provide them with a lock on their side of the door that separates their suite from the landlord's.

The tenants testified that there is one bathroom in their rental unit, and on August 2, 2019 they noticed water leaking from the toilet or wall. It was undisputed that the tenants contacted the landlord, and a plumber attended the rental unit to investigate the problem. The plumber determined that the leak originated from a valve that required replacement. The tenants followed up on August 16, 2019 about the delay as the tenants were informed that the landlord was waiting for parts to arrive as they were under warranty. The tenants were concerned about the growth of mold in the meanwhile.

The plumber arrived on August 19, 2019 to fix the valve, and the tenants pointed out a wet spot on the wall. The tenants testified that the plumber left after 20 minutes, and the landlord informed them that the problem had been fixed. The tenants noticed that the wall was still wet, and both the tenants and their daughter started feeling sick with cold like symptoms. The tenants informed the landlord, and testified that the landlord was angry at the tenants for not informing him earlier of the problem. On December 10, 2019, the tenants requested that the landlord call a remediation company, and the landlord informed the tenants that he would be performing monthly suite inspections. The tenants testified that they had visited the doctor on December 17, 2019 to have chest x-rays done, and are waiting for allergy tests. The tenants testified that on December 18, 2019 the landlord wanted to sand and paint the wall, without opening the wall up. The tenants insisted that the landlord open the wall, and the landlord discovered black mold. It was undisputed that the landlord obtained test results, but the tenants believe that the testing was a "cheap mold kit" which was self-administered and then sent to a lab. The landlord provided a copy of the mold testing in their evidentiary materials, and testified that the testing was performed by a professional company which they paid for.

In the report the Method of Analysis is described. "Tape/Lift/Slide, Bulk or Swap samples received in the lab for Direct Microscopic Examination are processed according to the SOP-MBL-M-2. Slides are prepared directly from bulk, tape or swab samples for microscopic examination." The report states that the sample was collected on December 18, 2019 and analysed on December 20, 2019. The result of the testing was "slight growth" of "Penicillium sp."

The landlord testified that there is no longer a leak, and that the malfunctioning valve inside the toilet was replaced. The landlord testified that the water was from a minor leak, and the plumber was called as soon as possible to deal with the matter. The landlord testified that this was a brand new home, and feel that no further testing, remediation, or repairs are required. The landlord confirmed that slight mold growth was detected, but has been removed, and as the leak was fixed the area should be free from mold.

Analysis

Section 32 of the *Act* reads in part as follows:

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...

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement...

It is disputed by both parties as to whether the landlord has maintained the premises in accordance with section 32 of the *Act*. It is undisputed that there was an issue in the brand new home which involved a fixture and a leak in the tenants' bathroom. It was also undisputed that a plumber was dispatched immediately, and the source of the leak was addressed by a valve replacement. The tenants' concern is whether the delay in

the repair has caused mold growth that has adversely or can adversely affect their health. The tenants requested remediation, and the landlord provided the results of a lab test that show slight mold growth in the area. The tenants are concerned about the quality and reliability of the testing that was done as they believe that the test was administered by the landlord and sent to a lab for testing.

Based on the testimony of both parties, and the written evidence before me, I find that although the landlord did act in a timely manner by dispatching a plumber, replacing the valve, and performing testing on the area, I am not satisfied that the test results in evidence are sufficient to show that the mold in the tenants' bathroom has been dealt with in a manner that complies with section 32(1) of the *Act*. I find the tenants' concerns about the administration of the mold testing to be valid, and reasonable considering that mold growth was detected despite the fact that the home is brand new, and that there was water in the area that had possibly contributed to this growth.

I also note that this kind of repair would fall within the category of emergency repairs as defined in the following portion of section 33 of the *Act*:

- 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, ...*

Given the testimony and evidence before me, I order the landlord to retain the services of licensed tradespeople to inspect and, as required, repair the rental unit to an adequate level of occupancy as set out in sections 32 and 33 of the *Act*:

I order the landlord to retain the services of a licensed mold remediation company to inspect and perform remediation as required in this rental unit to ensure that the tenants have access to an environment that meets health and safety standards.

I order that the landlord obtain a written report of the above-noted inspection by licensed tradespeople and provide a copy of this report to the tenants within one week of the landlord having received this report.

I order the landlord to undertake this inspection and undertake necessary repairs performed by licensed tradespeople as soon as possible.

In the event that no repairs or remediation is required, I order that the landlord obtain a report from a licensed mold remediation company confirming this, and provide this to the tenants within one week of obtaining a copy of this report.

The tenants requested that the landlord provide them with a lock on the door that separates them from the landlord. RTB Policy Guideline #7 states the following about locks and access:

Where a tenant can prove that the landlord has entered contrary to the Residential Tenancy Act, the tenant may apply to have the locks to the rental unit changed. The arbitrator will consider, among other things, whether an order to change the locks on a particular suite door could endanger the safety of other nearby tenants. An order for change of locks will only apply to areas where the tenant has exclusive possession.

I am not satisfied that the landlord has entered the tenants' suite without their knowledge or permission, or in contravention of the *Act*. Accordingly, this portion of the tenants' application is dismissed without leave to reapply.

I allow the tenants to recover the filing fee for this application. The tenants may choose to give effect to this monetary award by reducing a future monthly rent payment by \$100.00.

As discussed in the hearing, I also order that the landlord provide a copy of the tenancy agreement to the tenants as required by section 13(3) of the *Act*.

Conclusion

I allow the tenants' application to obtain emergency repairs as required. I also allow the tenants' application to obtain the recovery of the \$100.00 filing fee for their application. This monetary award is to be accomplished by the tenants' one-time reduction of their next monthly rent by \$100.00.

The tenants' application for the change of lock is dismissed without leave to reapply.

I make the following orders:

I order the landlord to retain the services of a licensed mold remediation company to inspect and perform remediation as required in this rental unit to ensure that the tenants have access to an environment that meets health and safety standards.

I order that the landlord obtain a written report of the above-noted inspection by licensed tradespeople and provide a copy of this report to the tenants within one week of the landlord having received this report.

In the event that no repairs or remediation is required, I order that the landlord obtain a report from a licensed mold remediation company confirming this, and provide this to the tenants within one week of obtaining a copy of this report.

I also order that the landlord provide a copy of the tenancy agreement as required by section 13(3) of the *Act*.

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: January 20, 2020

Residential Tenancy Branch