



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ECO-WORLD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RP, PSF, OLC, RR,

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on February 12, 2020 wherein the Tenant requested the following relief:

- monetary compensation from the Landlord;
- an Order that the Landlord:
 - make repairs, emergency and otherwise to the rental unit;
 - Provide services or facilities as required by law;
 - Comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement; and,
- an Order permitting the Tenant to deduct the cost of repairs, services or facilities from their rent.

The hearing of the Tenant's Application was conducted by teleconference at 11:00 a.m. on April 23, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter—Date and Delivery of Decision

The hearing of the Tenant's Application concluded on April 23, 2020. This Decision was rendered on May 29, 2020. Although section 77(1)(d) of the *Residential Tenancy Act* provides that decisions must be given within 30 days after the proceedings conclude, 77(2) provides that the director does not lose authority in a dispute resolution proceeding, nor is the validity of the decision affected, if a decision is given after the 30 day period.

The parties confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

Issues to be Decided

1. Is the Tenant entitled to monetary compensation from the Landlord?
2. Should the Landlord be ordered to make repairs to the rental unit
3. Should the Landlord be ordered to provide services or facilities as required by law?
4. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the residential tenancy agreement?
5. Is the Tenant entitled to an Order permitting the Tenant to deduct the cost of repairs, services or facilities from their rent.

Background and Evidence

In support of her claim the Tenant testified as follows. Her tenancy began June 2017 and she pays \$1,200.00 per month in rent for a two-bedroom unit.

In October and November, 2019 the Tenant began having respiratory problems. Shortly thereafter, in late December 2019 and early January 2020, the Tenant discovered mould on the wall in the master bedroom. The Tenant testified that as soon as the Tenant discovered the mould she moved from the master bedroom to the spare bedroom.

The Tenant communicated her concerns to the Landlord in January 2020. At this time she was also informed by the upstairs tenants that there was water coming in from a leak in the roof. The Tenant informed the Landlord on January 13, 2020 that she had moved out of the bedroom due to the water leak as well as her belief that the water was coming from the leak in the roof.

The Tenant stated that the Landlord sent in someone, who she described as a “handyman, to look at the mould on February 11, 2020. The Tenant says that all this person did was wash the mould off, which was ineffective as the mould reappeared “pretty much right away”. On February 22, 2020 the Landlord’s handyman came back and washed it again. At this time the Tenant had also found mould by the bathroom sink but the handyman did not address that issue.

The Tenant testified that the situation has continued to worsen as there is now mould in the other bedroom, the bathroom sink, and on the wall that connects the bedroom and the living room.

The Tenant stated that she did not have mould issues until the roof started leaking. She was informed by the upstairs tenants that the Landlord had the leak fixed but the upstairs unit also still has moisture. The Tenant confirmed that aside from washing the mould, the Landlord has not done anything further to deal with the mould issues.

In response to the Tenant’s claims, the Landlord’s Agent testified as follows.

The Agent denied there was a leak in the roof. She suggested that it wasn’t possible as the building is 8 years old, it is a “new house” and there were no issues.

The Agent confirmed that she was first informed on January 13, 2020 that there was mould in the rental unit. The Agent claimed that they first sent their “handyman” to look at this on January 18, 2020. She says she was informed by the handyman that the mould was due to the Tenant keeping the windows tightly closed, such that there was no air circulation. She further stated that the Tenant refused to open the windows because she has a baby. The Agent confirmed that it is the Landlord’s position that the mould issues are a result of the Tenant not properly ventilating the rental unit

The Agent confirmed that this is the first time the Tenant has complained of mould in the rental unit.

The Agent further confirmed that she did not go to the rental unit to look at the mould, as they relied on the contractors which she described as “qualified licensed technicians”. She stated that they don’t believe that there are mould issues in the rental unit and she does not believe it is her responsibility to attend the rental unit.

Introduced in evidence by the Tenant was an email dated January 17, 2020, from the Agent’s assistant, J., to J.S., the Tenant’s former partner, J.S. who wrote as follows:

“...I will have F. to clean the mold at this moment. I don’t think it relevant to the minor leak upstairs. Please consider this is an old house, try to pen the windows sometimes. It will help.

After cleaning you won’t see the stains. This is common in the winter, that why we ask tenant to open the window some time every day. Also. we had plumber checked leaking upstairs, that leak had nothing to do with the black stains. On other properties, after cleaning it is all good.”

When I brought this email to the Agent’s attention she again stated that there was no leak at the rental home.

The Tenant provided a copy of her response to the January 17, 2020 email in which the Tenant reminded the Landlord that she had resided in the rental unit since June of 2017 and in the last two winters she didn’t get mould. She also reminded the Landlord that the upstairs renter could bring in a moisture meter as they were employed in remediation.

The Tenant also provided J.’s response to the Tenant’s message wherein J. wrote:

The owner is willing to clean it only right now. If you don’t feel comfortable with that, you might want to look for newer place.

Also introduced in evidence by the Tenant was another communication from the Tenant’s former spouse, J.S. who informed the Landlord on January 17, 2020 that he had personally seen the mould. He informed the Landlord he worked for a restoration company and warned the Landlord of the dangers of not addressing the moisture issues in a timely manner. The remainder of the text communication confirms the Landlord did not take any further steps aside from having a handyman wash the mould on a few occasions.

Analysis

In this section reference will be made to the *Residential Tenancy Act* (the “*Act*”) which can be accessed via the Residential Tenancy Branch website at:

www.gov.bc.ca/landlordtenant.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove their claim.

Section 7(1) of the *Act* provides that if a Landlord or Tenant does not comply with the *Act*, regulation or tenancy agreement, the non-complying party must compensate the other for damage or loss that results.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 65(1)(f) of the *Act* allows me to reduce a Tenant’s past and future rent payments by an amount that is equivalent to the reduction in the value of the tenancy.

The Tenant claims monetary compensation as a result of her inability to use the master bedroom in the rental unit. She also requests orders that the Landlord address the moisture and mould issues and properly attend to the required remediation.

I accept the Tenant’s evidence that she began experiencing respiratory issues in late 2019. I also accept her evidence that she discovered mould in the master bedroom in late 2019 or early January 2020. I find that the Tenant brought this to the Landlord’s attention immediately and stopped using this room as a bedroom.

Section 32 of the *Act* mandates the Tenant’s and Landlord’s obligations in respect of repairs to the rental unit and provides as follows:

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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the 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.

I find, based on the evidence before me, that the Landlord has failed to address the moisture and mould issues in the rental unit as required by section 32 of the *Act*. Although the Landlord sent a handyman clean the walls, they did not take adequate steps to address the moisture issues or ascertain the extent and severity of the mould.

The Tenant testified that she was informed of a leak in the upper unit which she believes is likely the source of the moisture in her unit. The Landlord's Agent denied there was a leak in the upstairs and repeatedly stated the building was new. She also stated that the Tenant caused the mould by not properly ventilating the rental unit.

I accept the Tenant's testimony that until late 2018 and early 2019 she did not have any issues with mould at the rental unit. I find, on balance, that the moisture issues originate from the leak at the rental home, not anything the Tenant did, or failed to do.

I do not accept the Landlord's agent's testimony that she was unaware of a leak at the rental home. The electronic communication submitted by the Tenant was written by the Agent's assistant and contradicts the Agent's testimony in this regard. On this basis, I find that the Landlord's representatives were aware of a leak at the rental building and failed to take adequate measures to address these issues.

I accept the Tenant's evidence that the mould in the master bedroom has made that room inhabitable. I therefore find she is entitled to monetary compensation, pursuant to section 65(1)(f) of the *Act*, for loss of use of the master bedroom. In her Application the Tenant sought the sum of \$300.00 per month; I find this request to be reasonable based on the fact she pays \$1,200.00 per month for a two-bedroom rental unit.

I also accept the Tenant's evidence that she informed the Landlord she could not use the master bedroom and moved out of that room in January of 2020. Although the Tenant attempted to resolve this issue with the Landlord, I find the Landlord did not adequately address her concerns. The response from the Landlord's Agent's Assistant's was that the Tenant could simply move out if she was unhappy.

The Tenant applied for dispute resolution on February 12, 2020. Pursuant to section 65(1)(b) of the *Act* I award the Tenant a retroactive and ongoing rent reduction in the amount of \$300.00 per month commencing February 2020. This \$300.00 rent reduction will continue until the Landlord addresses the moisture and mould issues in the rental unit as required by my Decision. To this end, I Order, pursuant to section 32 and 62(3) of the *Act*, as follows:

1. By no later than June 15, 2020, the Landlord shall retain the services of a qualified mould remediation company to assess the moisture and mould issues in the rental unit. The Landlord shall request the mould remediation company to provide a written report of their recommendations and shall provide the report to the Tenant within two days of receipt of the report.
2. By no later than June 30, 2020, the Landlord shall take the recommended steps to remediate the rental unit.

As the Tenant will have likely paid her June 2020 rent at the time she receives this Decision, I find the Tenant is entitled to the sum of \$1,500.00 calculated as follows:

Rent reduction for February 2020	\$300.00
Rent reduction for March 2020	\$300.00
Rent reduction for April 2020	\$300.00
Rent reduction for May 2020	\$300.00
Rent reduction for June 2020	\$300.00
TOTAL AWARDED	\$1,500.00

The Tenant may recover the \$1,500.00 from her future rent payments.

Conclusion

The Tenant's Application for an Order for monetary compensation from the Landlord is granted. The Tenant is entitled to a retroactive \$300.00 per month rent reduction from February 2020 as well as an ongoing rent reduction until the Landlord addresses the

moisture and mould issues in the rental unit. For the months February through June 2020, this amounts to the sum of \$1,500.00 which the Tenant may deduct from her future rent payments.

The Tenant's request for an Order that the Landlord comply with the *Act* and make repairs to the rental unit pursuant to sections 32 and 62(3) of the *Act* is granted. The Landlord must, by June 15, 2020, retain a qualified mould remediation company to assess and provide recommendations as to the moisture and mould issues in the rental unit. The Landlord must take the recommended steps to address the moisture and mould issues by no later than June 30, 2020.

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: May 29, 2020

Residential Tenancy Branch