



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on June 1, 2020, at 11:00 am. 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 receipt of the Landlord's evidence. I find both parties sufficiently served their packages to each other for the purposes of this proceeding.

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 the Landlord should be given an order to comply with the Act, the Tenancy Agreement, or the Regulations. The Tenants stated that this is the ground they are most concerned about, and this is what they wanted to focus on, as it pertains to their health and safety. After considering all of this, 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:

- An order that the Landlord comply with the Act, regulations, and/or a tenancy agreement.

The Tenant's request for monetary compensation is dismissed, with leave to reapply.

Issue to be Decided

- Is the Tenant entitled to an order that the Landlord comply with the Act, or the Tenancy Agreement?

Background and Evidence

There are 3 Tenants who reside in this unit, one of which has cancer of the blood. As a result, the Tenants are extremely concerned about her health and wellbeing and do not feel the Landlord has properly cleaned up after their kitchen sink overflowed. The Tenants explained that the tenancy started at the beginning of March, 2020, and almost immediately after moving in, the kitchen sink backed up in the middle of the evening. The Tenants stated that it was all dirty sewer water and it leaked all through the cabinets, the kitchen floor, and made its way into the adjoining dining and living room areas. The Tenants stated that this flood happened on March 1, 2019, and it took a couple of days to fully clear the blockage. The Tenants stated the plumbing issue was not fixed until March 3, 2020, and for a couple of days they had to keep emptying the sink with a bucket, as it filled up with dirty water from the units in the building above them.

The Tenants are seeking to have the area professionally cleaned up, and they want to make sure there is no mould forming. The Tenants are upset with how the Landlord has handled the situation.

The Landlord (agent), stated that he immediately mitigated the issue on the same day, and attended the rental unit to assess the issue. The Landlord stated that it became

apparent that there was a larger issue in the main plumbing stack of the building, because the sink would back up, even when the Tenants were not using it. A plumber's report was provided into evidence which corroborates that it was an issue with the plumbing stack, outside of the rental unit.

The Landlord stated that after the issue was fixed, on March 3, 2020, there have not been any further problems, since it was just a block in the main plumbing stack. The Landlord stated that he has seen no evidence of mould in the area because it was only wet for a short period of time. The Landlord also stated that some cleaning has been done, but not professionally. The Landlord stated it is not possible to sanitize every nook and cranny in the area.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

The evidence shows that there was a plumbing issue, which was not the Tenants' fault. It appears that dirty sewage water from other rental units higher up in the building, had backed up into their kitchen sink, and all through the cabinets and onto the flooring. I accept that this is a serious concern for health and safety, especially considering one of the Tenants has cancer and has a compromised immune system. I also acknowledge there are heightened concerns due to the current pandemic. I note the Tenants are still interested in having the unit cleaned professionally, as they feel it has been soiled and not properly cleaned up.

Although the issue with the plumbing backup was beyond their control, the Landlord took steps to ensure the issue was fixed as soon as they could. I accept that they had to liaise with the strata plumber as the issue was bigger than initially expected. I do not find this issue was the Landlord's or the Tenants' responsibility or fault. However, the Landlord is responsible for ensuring that the rental unit is safe to live in, from a health and safety perspective.

This appears to be a short-lived issue that occurred over a couple of days, with most of the spillage happening on the first day, March 1, 2020. The plumbing has now been fixed, so no orders are required to further remedy that issue. However, I accept that the unit may not have been sufficiently cleaned after the soiled water infiltrated the kitchen area. As such, I find the Tenants are entitled to some help in this regard, as they did not cause the issue. Although it is not reasonable for the Tenants to expect to have the entire rental unit 100% germ free, I find there is still some cleaning that is required. I

hereby order the Landlord to have a professional cleaner come and clean the kitchen sink area (counters, accessible interior cabinet surfaces, the area around the cabinets) the kitchen flooring, as well the living room and dining room floors, in case any dirty water was tracked into that area. The Landlord must communicate to the cleaner what the issue was, so that appropriate cleaning actions can be taken, such as using the appropriate cleaners and/or tools.

Given the Tenants expressed a willingness to have someone professionally clean the unit, sooner than later, I order the Landlord to have this completed no later than 2 weeks after getting this decision. The Landlord must take into consideration the Tenants' preferences for accessing the unit, in terms of a date and a time to have the cleaning done. This will allow the Tenants to either be onsite, or not, depending on preferences.

I find there is insufficient evidence that there are any mould concerns, given the short duration of the water incident, and the fact the Landlord stated they specifically noted no visible issue. The Tenants did not state they have seen any evidence of mould.

As the Tenants were partially successful with their application, I grant them the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Landlord is ordered to have the areas specified above professionally cleaned, in order to comply with reasonable health and safety standards.

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: June 01, 2020

Residential Tenancy Branch