



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Obion Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RP, RR, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation (Regulation) or tenancy agreement, pursuant to section 67 of the Act;
- an order requiring the landlord to carry out repairs, pursuant to section 33 of the Act;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65 of the Act;
- an order for the landlord to comply with the Act, the Regulation and/or tenancy agreement, pursuant to section 62 of the Act; and
- an authorization to recover the filing fee for this application, pursuant to section 72 of the Act.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. Witness CT for the landlord also attended.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing the tenant advised the tenancy will end on August 31, 2020 and he is no longer seeking for an order requiring the landlord to carry out repairs, to reduce the rent for repairs and for the landlord to comply with the Act.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amended the tenants' application to withdraw their claim for an order requiring the landlord to carry out repairs, to reduce the rent for repairs and for the landlord to comply with the Act.

Issues to be Decided

Are the tenants entitled to:

1. receive a monetary award for compensation for damage or loss?
2. an authorization to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their application.

Both parties agreed the periodic tenancy started in March 2010 and the tenancy will end on August 31, 2020. Monthly rent, due on the first day of the month, is \$1,413.00. At the outset of the tenancy a security deposit of \$575.00 was collected by the landlord and he still holds it in trust. The tenancy agreement was submitted as evidence.

The tenant affirmed the rental unit's bathroom does not have a proper mechanic ventilation system and the small duct is not enough for the moisture to escape. The bathroom has been developing mold. Although the tenant submitted several requests to the landlord and the residential tenancy branch policy guideline 40 states the interior of rental units should be painted every four years, the interior of the rental unit has not been painted since March 2010 and the bathroom caulking has not been replaced.

The first time the tenant required maintenance for the bathroom was in April 27, 2011. The email sent to the landlord on that date states:

Our bathroom ceiling likely needs to be replaced because of long term exposure to moisture without any air circulation and poor attempts to seal it properly with paint and maintenance.

On October 25, 2016 the tenant emailed the landlord and stated: "Please also address the black mould (SIC) that is developing on the ceiling in my bathroom." The tenant explained the mold situation has been concerning since that email was sent.

On August 16, 2019 the tenant submitted a written request for maintenance to the landlord. It states:

There is black mold growing on the ceiling and caulking of my shower [...]. I am hoping that we can resolve the above issue on or before August 23, 2019. If the problem continues by the specified date, I may file an application for dispute resolution through the Residential Tenancy Branch requesting and order for you to comply.

The tenant showered daily at his rental unit until February 2020, when his girlfriend moved in. Since then they have not been able to use the shower regularly, as his girlfriend is pregnant and has underlying medical conditions. The tenants have been showering at friends and relatives houses and in community centers and gyms.

The higher moisture levels when the shower is used makes the mold more active. When the tenants receive guests they are always embarrassed because of the excessive mold in the bathroom.

The tenant argued he always cleaned the bathroom weekly during the tenancy and he started using bleach and a product called 'Zep' on a regular basis. After his girlfriend moved in the cleaning habits did not change.

The landlord explained the rental building was built in the 1950s and the duct in the bathroom allows the moisture to escape more efficiently than a mechanic ventilation system. The mold issue in the tenant's bathroom is caused by inadequate cleaning and clause 09 of the tenancy agreements states it is the tenant's responsibility to clean the rental unit. The landlord also affirmed the tenant was aware the rental building is not new when he moved in.

On April 18, 2020 the tenant emailed the landlord and asked him to take action to remove the mold and eliminate its source. The landlord replied eleven days later:

A bathroom by definition is a damp place where mould can grow. Regular and proper cleaning of a bathroom, which is your responsibility, solves this issue. If you have not maintained you will have to remove the old grouting and replace it.

On April 30, 2020 the landlord offered the tenant a silicone grout removal tool. On May 18, 2020 a new request for repair was submitted by the tenant. The landlord affirmed he did not do the repairs because the tenant did not allow his contractors or himself to enter the rental unit.

On July 31, 2020 the tenant emailed the landlord and explained the inspection protocol to allow the landlord to enter the rental unit. The email listing fourteen requirements to be met by the landlord to inspect the rental unit also states:

All of the above items are critically important to maintaining safety in general, but are even more important in our case because [anonymized] is currently at a higher risk due to pregnancy. Furthermore, the pregnancy is considered high risk, which means there is no margin for error nor any opportunity to relax the above protocols.

Both parties submitted photographs of the bathroom showing different levels of mold.

Witness CT states the tenant submits a large number of complaints about the rental unit, the other 37 apartments in the rental building do not have issues with mold and the mold in the tenant's bathroom is not as bad as the tenant states. The tenant submitted complaints about the refrigerator, parking spot, and recycle bins besides the mold.

The tenant stated he lost the quiet enjoyment of his rental unit and is seeking for a compensation in the amount of \$2,423.00. A monetary order worksheet (RTB form 37) has been submitted. The tenant's girlfriend did not attend the hearing because she is pregnant and she should not be exposed to stress.

Analysis

Sections 7 and 67 of the Act state:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Director's orders: compensation for damage or loss

67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

The landlord must provide and maintain the rental unit in a state that complies with health and safety. Section 32 of the Act states:

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.

Based on the testimony of both parties and the witness, emails and photographs, I find the landlord failed to maintain the rental unit's bathroom in a state that complies with health and safety.

The parties offered conflicting testimony regarding the tenant's cleaning habits of the bathroom. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The respondent did not provide any documentary evidence to support his claim that the applicant does not clean the bathroom properly and this caused the mold in the rental unit. The applicant was detailed in his testimony about the cleaning habits of the bathroom and provided the name of a cleaning product used. I find the applicant cleaned his bathroom regularly.

Residential Tenancy Branch Policy Guideline 05 explains the duty of the party claiming compensation to mitigate their loss:

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.

Compensation will not be awarded for damage or loss that could have been reasonably avoided.

Partial mitigation

Partial mitigation may occur when a person takes some, but not all reasonable steps to minimize the damage or loss. If in the above example the tenant reported the leak, the

landlord failed to make the repairs and the tenant did not apply for dispute resolution soon after and more damage occurred, this could constitute partial mitigation. In such a case, an arbitrator may award a claim for some, but not all damage or loss that occurred.

I find the tenant knew there was a recurring mold issue since 2011, since October 2016 the situation was concerning and only in July 2020 the tenant submitted an application for dispute resolution. The tenant did not provide a valid reason to not have submitted an application sooner.

Thus, I find the tenants only partially mitigated their loss by remaining in the rental unit and not submitting an application sooner.

As the tenants only partially mitigated their loss, I find they are not entitled for the compensation claimed.

Residential Tenancy Branch Policy Guideline 16 states:

An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

As the landlord breached section 32 of the Act, I award the tenants nominal damages in the amount of \$500.00.

The tenants are partially successful in their application. Thus, I award the tenants the return of the filing fee.

In summary, the tenants are awarded \$500.00 for nominal damages and \$100.00 for the return of the filing fee, totaling \$600.00.

Conclusion

I grant the tenants a monetary order pursuant to sections 67 and 72 of the Act, in the amount of \$600.00.

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: August 20, 2020