



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Barclay Tower Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution under the Residential Tenancy Act (Act) for:

- an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons; and
- recovery of the filing fee.

The listed tenants and the landlord's agents attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). 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 and Procedural Matters-

Evidence –

The landlord confirmed receiving the tenants' application for dispute resolution and evidence included at that time. The tenants confirmed receiving the landlord's evidence, all in advance of the hearing.

The day before the hearing, the tenants submitted additional evidence, which the landlord said they had not received.

Rule 10.2 requires an applicant for an expedited hearing, as is the case here, to submit all evidence they intend to rely on at the hearing with their application for dispute resolution. As the tenants filed this evidence the day before the hearing, the tenants were informed that their additional evidence was excluded from any consideration in the hearing.

Tenant NE then asked if he could read the evidence sent in the day before the hearing. I informed the tenant he could read from it during the hearing, so long as the evidence was relevant.

Parties –

In response to my inquiry, the tenants said they listed their children as additional applicants. The tenants in the hearing referred to the ages of their children, one being three months of age. I find it appropriate to exclude the names of the tenants' minor children from the style of cause page in this Decision.

Amendment to and exclusion of issues –

As defined by section 33 of the Act, emergency repairs are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and 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, or*

(vi) in prescribed circumstances, a rental unit or residential property.

In this case, the tenants' application and evidence showed that their issues pertained to an alleged water leak in December 2019, and mold/odors. I find this evidence demonstrates that the water leak issue is not major or urgent.

I therefore find it was appropriate and necessary to amend the tenants' application, removing their request for an order requiring the landlord to make emergency repairs to the rental unit for health or safety reasons and adding a request for an order requiring the landlord to make necessary repairs to the rental unit.

The parties were informed of the change in the hearing and the hearing proceeded on the tenants' request for necessary repairs, under section 32 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to make necessary repairs to the rental unit and recovery of the filing fee?

Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of September 1, 2011, a fixed term through August 30, 2012, monthly rent of \$1,075, due on the 1st day of the month, and a security deposit of \$537.50 being paid by the tenants to the landlord. The written tenancy agreement shows the tenancy would continue after the date of the fixed term, on a month-to-month basis.

The tenant submitted that the current monthly rent is \$1,372.

The rental unit is in a multi-story, multi-unit apartment building, which the landlord said was built in the 1970's.

The rental unit is on the 19th floor.

In support of their application, the tenant submitted that the current primary issue is mold due to a water leak, which was brought to the attention of the landlord's agent, SW, on December 28, 2019. In a written request dated March 10, 2020, the tenants submitted that the mold issue was due to an uninsulated team pipe filling the bedroom

wall with moisture. The tenants said that they have been unable to use their bedroom due to the extremely strong smell.

The tenant said that they sent management an email and although repairs were made, they were inadequate, as they still currently smell mold.

The tenant said that one of the photographs he sent in was a hole in the wall in the adjacent rental unit, showing insulation and mold. In response to my inquiry, the tenant submitted that he took the picture from inside the other rental unit, in March.

The tenants submitted that they have made repeated requests of the landlord to make these repairs prior to making their application.

The tenants expressed concern for their and their children's health from the presence of mold.

The tenants referred to the Air Quality Report of the landlord to show that more work needs to be performed.

The tenants' accepted relevant evidence included photographs of exposed walls without the drywall and written requests to the landlord.

Landlord's response –

Landlord WL submitted that he did not learn of the tenants' unhappiness with the smell in the rental unit until late January 2020, as their resident manager had major health issues and was hospitalized for several weeks. WL said he had the associate resident manager give the tenants his personal phone number; however, they did not call for at least a month.

WL said that they have addressed all the requests of the tenants and have spent over \$15,000 in repairs. Some of the repairs included opening up the walls, replacing the insulation around pipes and made sure the walls were clean. The landlord submitted that they completely replaced the window frame and window in the bedroom with a top-of-the-line thermopane type.

The landlord submitted they installed new vertical blinds and replaced the carpet under pad as well as repair the drywall and repaint the bedroom.

According to the landlord, at the beginning of April, a larger rental unit became available and was offered to the tenants, but because it was newly renovated and was larger, the monthly rent was greater than their current monthly rent, though it was well below market rate. The tenants refused as they wanted to stay on the 19th floor.

The landlord submitted that after the window was replaced, they heard nothing further from the tenants about smells or odors until receiving their application for dispute resolution.

The landlord submitted that they learned the tenants detected an odor from an electrical outlet in the bedroom, which has been replaced.

The landlord submitted that the tenants also were offered a newly renovated adjoining rental unit on the same floor, but declined.

The landlord submitted that the tenants have been given two months free rent for April and May.

The landlord said that he had to arrange for contractors during Covid-19, when many companies had shut down or were reluctant to enter other's premises.

The landlord referred to the air quality report they commissioned to assert that there is not a mold or air quality issue in the rental unit.

Testimony of landlord's agent, MN –

MN said that they have done everything possible to address the tenants' complaints. MN said they have opened up the walls in the rental unit and the adjoining rental unit, put new insulation over the pipes and replaced the drywall. MN said the entire window was replaced.

MN said he replaced two electrical outlets at the tenants' request and that they have checked the rental units above and below this rental unit and cannot detect mold or mold smells.

MN said he and others are unable to detect any mold smells in the rental unit.

The landlord's relevant evidence included a receipt for \$882 for an environmental consulting report, the air quality report for the indoor air, a polycrete invoice for injection

of caulking for the exterior and interior of the bedroom window, an invoice for the installation of flashing to the bedroom window frame, a plumbing invoice for wrapping a hearing riser to avoid condensation, a plumbing invoice for checking the rental units above and beside the rental unit for moisture, an invoice for opening walls and repairs, an invoice for \$4,416.87 for the replacement bedroom window, frame, sill, flashing, and spray foam, a flooring invoice for new underlay and moulding for the bedroom, an invoice for new insulation after the new window and rebuilding the walls, an invoice for the blinds, a copy of the rent ledger sheets showing the monthly rent credit for April and May and pictures of the open wall with newly wrapped piping and new insulation.

Rebuttal of the tenants –

The tenant said they know the landlord tried their best, but that the mold smell persists. The tenant said that the landlord should replace the drywall in the next rental unit.

The tenant asserted that the air quality report does show a future issue with mold and is not as the landlord presents.

Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

Section 32 of the Act requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Where a tenant requests such repairs, I find the landlord must be afforded a reasonable amount of time to take sufficient action.

In this case, I find the evidence shows quite clearly that the landlord dealt with the tenants' requests concerning the claimed continuing mold smell promptly after becoming aware of the tenants' requests.

I find the evidence shows that the landlord took the requests seriously and took all reasonable measures to locate the source of the mold smell and remediate the issue. The invoice evidence shows that the landlord spent \$14,455 in repairs and gave the tenants two months' rent credit.

The landlord submitted copies of all their invoices proving the extent and nature of the work to locate and remediate the source of the mold smell. I also accept the landlord's testimony that the Covid-19 pandemic made finding contractors willing to accept the work more challenging, yet, the work was done.

The landlord's photographs show open walls, removed drywall, pipes, and insulation indicating extensive construction work to locate and remediate the source of the mold smell. One contractor's report showed details of the window installation and associated insulation and drywall replacement. A plumber's report showed a check for leaks and moisture, with none detected. That plumber's report also indicated a possibility the moisture was from window condensation. The landlord submitted an invoice for a subsequent window replacement.

The landlord commissioned an air quality report, which stated that from a review of the lab samples, "there does not appear to be elevated mould spore air concentration inside Unit 1905 and applicable indoor air quality guidelines have been met".

The tenants asserted the air quality report indicates there is a mold issue; however, I disagree. The report suggests that there was a potential for an issue with air quality in the future. A possible future occurrence does not prove that there is a present problem, in my view.

I find the response of the landlord to the tenants' complaints of a mold smell to be exemplary and in my view, the landlord went beyond what would normally be required of a landlord in addressing a tenant's repair requests.

I find the evidence shows that the landlord complied with their obligation under the Act to address the tenants' repair requests in a timely manner and I find this response to be comprehensive, thorough, and as noted, exemplary.

I therefore dismiss the tenants' application for an order for repairs to the rental unit, without leave to reapply. As I have dismissed the tenants' application, I decline to award them recovery of their filing fee.

The air quality report indicated fungal spores are found everywhere and whether or not symptoms develop in people exposed to fungi depends on various susceptibility factors.

Given that the landlord has fully dealt with the tenants' complaints concerning a mold smell, the above noted contents of the air quality report, and the age and character of the 1970's building, if the odor remains an issue for the tenants, they may have to acknowledge they have a possible high sensitivity to odors in deciding whether to remain in the rental unit or relocate to another residential property.

Conclusion

Due to my findings that the landlord complied with their obligations under section 32 of the Act, the tenants' application is dismissed, without leave to reapply.

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: September 11, 2020

Residential Tenancy Branch