



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for an Order for the Landlord to make emergency repairs, and to recover the \$100.00 cost of their Application filing fee.

The Tenants, C.B. and I.H, the Landlord, H.C., and the Landlord's wife, I.C., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenant testified that he served the Landlord with the Notice of Hearing documents delivered in person on August 27, 2020. He said everything he had uploaded to the RTB was also contained inside the envelope; however, the Landlord's wife said that they did not receive any photographs. Given concerns I had with this witness's testimony, noted later in the decision, I question the veracity of her statement regarding service of the Tenants' documents. Further, the Landlord said it would be fine if the Tenants emailed him the pictures at the Landlord's daughter's email address, who they were currently visiting.

I find that the Landlord was deemed served with the Application and Notice of Hearing documents in accordance with the Act, and that the Parties exchanged evidentiary submissions, as well.

Preliminary and Procedural Matters

The Tenants provided their email address in the Application, and in the hearing, the Landlord provided his current mailing address for the Decision to be sent to them. The Parties confirmed their understanding that the Decision would be emailed to the Tenants, mailed to the Landlord, and any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Issue(s) to be Decided

- Should the Landlord be ordered to make emergency repairs?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on July 3, 2020, with a monthly rent of \$750.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$375.00, and no pet damage deposit. The Parties agreed that they did not do a condition inspection of the rental unit at the start of the tenancy.

In the hearing, the Tenants said:

Basically, about a week after we moved in, I noticed black mould growing in a corner behind the toilet. Looking at that, I mentioned it to Harry, and he has seen it and said it's not too big a deal. Shortly after, we went in another room in which a piece of the drywall had been cut out. I smelled a mouldy, musky odour, and could see black mould inside of the wall through the hole in the drywall with a flashlight on my phone. I took pictures inside the wall.

There was also a tap dripping... told Harry about it. He said he'd fix the plumbing part. He offered us to move into his place, because he didn't want us in a hotel. Then [the Landlord] went to Calgary.

They'd need to remove the drywall. Take the toilet up, remove the toxic mould. I

have a hard time breathing, from allergies and the stuffiness. He was very nice when we approached him, though rather upset about the problem, which is understandable. That's pretty much it. They fixed the plumbing part, but not the mould problem. They wanted us to get out, but we don't have any where to go, so I decided to file a dispute notice.

The Landlord said he had a plumber attend the rental unit to fix the leaky tap, although, the Landlord had not given the Tenants the required 24-hours advance, written notice of the plumber's attendance. He subsequently complained that the Tenant was not up to receive the plumber, as arranged.

The Landlord's wife said:

First, there's no way we said we'd put him up in our house. Never. We never heard from these people who are mould specialists. We have not received any contact from them, or all of what [the Tenant] says. We see nothing official from the government or from these people he wants to fix it. We have not got any pictures or any legal documents; it's all hearsay.

The Landlord submitted a one-page statement, which included acknowledgement of the Tenants having given the Landlord the name and telephone number of mould specialists. In the statement, the Landlord said that he had talked to the mould specialist:

They informed me that they may have to rip out complete bathroom including one piece fiberglass tub & shower and they charge between \$35 & 40 /hr.... I told [the Tenants] this was not going to happen. [The mould specialist] called me 4 or so times to start even when [I'm] in Calgary.

I find the Landlord's wife's statement noted above is internally inconsistent with the Landlord's own evidence submitted to the RTB. I find this raises questions in my mind about this witness's testimony before me.

The Landlord also stated in his statement: "I wish to have [the Tenants] get out on September 30/20." **I caution the Landlord** that he is obliged to follow the obligations set out in the *Residential Tenancy Act* for landlords in all matters involving tenants.

The Tenant said:

I tried to find an actual mould company in the [area]. I went on [the local] 'buy and sell', and I found someone who did it for everyone here. There's no report, because he and the plumber did not want to be involved in a legal matter. I know this is toxic black mould, because it's dark black mould and I have asthma, and I've been in such environments before. We had to move because of the same issue. Black mould growing in a previous place we lived; another tenant was in the hospital three times. Here, the first indication that there was a problem came the next morning – I had a stuffy nose and itchy eyes. We had cleaned the place well. I have looked at black mould, looked on google, other people confirmed it, as well as the people who came to inspect the place.

The Landlord said:

We have nothing in writing that he is sick. We have no pictures. All those papers from him, we came home and there was an envelope taped to door. There was stuff from government office. That's all that was in that envelope. The dripping just started. It was not there when they moved in. There was no dripping.

The Tenants said:

It was a previous problem, because of the way the drywall was cut out. If this problem wasn't a known problem.... We would have to do it ourselves and cut this piece out. It was attempted to be cut out before, but I know that it's not possible for that black mould to develop that quickly. It's been like that for a long period of time. Not just one week.

The Landlord said:

The drywall was cut out behind the bathroom where the hot water tank is. The water line runs up that wall. I looked up and I thought I saw a bit of mould. I don't know much about mould. But I would get somebody In November we had that house completely painted, he's the first tenant after the paint job.

The Landlord said:

We have never ever had problems with our tenants before. This is the first time anybody had ever given us any trouble. We were always good to our tenants. We were good to him until he started all this. They have been harassing us this since it started. 'I'm not paying the rent until you fix this,' he said. We feel that he has

been the most unreasonable tenant we've ever had.

Again, **the Parties are both cautioned** to follow their rights *and obligations* as set out in the *Residential Tenancy Act*. A tenant who advises a landlord that there may be mould in the walls of the rental unit is not being "troublesome" to the landlord; this is a health and safety matter that the Landlord must repair. Further, a tenant must pay rent when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The Tenants submitted photographs that they took within the wall of the rental unit where the drywall is cut out. Of these, there are three or four photos which show grey or black coloured mould all over the inside of the wall.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 33 of the Act sets out what "emergency repairs" means. It says that emergency repairs are "urgent, necessary for the health or safety of anyone or for the preservation or use of residential property." The Act also states that emergency repairs are 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.

While I find that the repairs sought by the Tenants are "urgent and necessary for health or safety of anyone and for the preservation of the residential property, I find that they do not qualify as "emergency repairs" under section 33 of the Act. However, landlords' and tenants' rights and obligations for repairs are set out in section 32 of the Act, which states:

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.

...

(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.

[emphasis added]

The *Residential Tenancy Act* Regulation – Schedule: “Repairs” provides further instruction to the Landlord, as follows:

Repairs

8 (1) Landlord's obligations:

(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair.

[emphasis added]

A landlord is responsible for repairs when a request for repairs is made to ensure reasonable functioning or lawful compliance with health, safety and housing standards. I find based on the evidence before me overall, that the Landlord has failed to comply with these responsibilities in terms of the concerns raised by the Tenants. Based on the Tenants’ testimony and documentary evidence submitted, I find that the Landlord has ignored or failed to respond to those concerns appropriately.

I therefore **Order** the following:

1. **Within 14 days of the date of this Decision, namely by September 24, 2020**, the Landlord shall retain the services of a **qualified, independent mould expert** to investigate and recommend remedial steps to address the mould issue in the walls of the rental unit. The Landlord shall also instruct the mould expert to provide recommendations to both Parties, as to use of de-humidistat and exhaust fans. The Landlord shall ensure that the mould expert's recommendations are contained in a written report.
2. The Landlord shall provide a copy of the report from the mould expert to the Tenants **within two days of receipt of same**.
3. Should the mould expert make recommendations for remediation of the moisture and mould, the Landlord shall complete those recommended repairs and remediation **within three weeks of receipt of the report**.
4. Should the Landlord fail to retain the services of the mould expert as required in paragraph 1, or fail to rectify any issues in accordance with the mould expert's written recommendations as required by paragraph 3, the Tenants **may reduce their rent by \$375.00 per month** until such time as the Landlord complies.

Should the Parties disagree as to whether the Landlord has complied with any of the Orders set out in this Decision, they may apply for further direction or Orders from the RTB.

The Tenants may reapply for further rent reductions or monetary compensation, should the Landlord fail to comply with the above Orders.

Given their success in the Application, the Tenants are awarded recovery of the \$100.00 Application filing fee. The Tenants are authorized to reduce their next rent payment by \$100.00 in satisfaction of this award.

Conclusion

The Tenants' Application for an Order that the Landlord make repairs is granted. Should

the Landlord fail to comply with the Orders as set out in this Decision, the Tenants are entitled to reduce their rent according to the terms set out above.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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