



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, OLC, MNDC, 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 repairs to the rental unit;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- compensation for a monetary loss or other money owed; and
- recovery of the filing fee.

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

The parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their affirmed evidence orally and to refer to relevant 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.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Are the tenants entitled to an order for repairs and the landlord's compliance with the Act?

Are the tenants entitled to monetary compensation and to recover the cost of the filing fee?

Background and Evidence

Submitted into evidence was a written tenancy agreement showing a tenancy start date of September 1, 2020, a fixed term through August 31, 2021, monthly rent of \$2,300, due on the 1st day of the month, and a security deposit of \$1,150 and pet damage deposit of \$500 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.

Request for an order for repairs and landlord's compliance with the Act –

In response to my inquiry, the tenant, EC, said that to some extent, the requested repairs have been made. The tenant said that there were repairs made behind the drywall under the window and the bathroom fan was fixed the day prior to the hearing; however, the tenants understood an entire wall needed to be replaced.

The issue in this matter was the tenants' claim that there had been mold growing inside the rental unit and in particular, the master bedroom around the windowsill, on the wall beneath the window, and baseboards.

The tenants submitted that they notified the on-site manager on November 27, 2020, and failed to get a response. After several unsuccessful attempts with the on-site manager, EC said she contacted the senior manager here, CA, a week later, December 4, 2020, by email.

CA responded in less than 2 hours and asked for pictures of the problem area. On December 8, 2020, EC contacted CA again, and was provided an update. The update included that the matter was relayed to the ownership group. On December 9, 2020, a tradesperson attended the rental unit for an initial assessment.

In December, the matter of the drywall underneath the window was corrected.

EC submitted that mold is likely to return, as the on-site maintenance agent, DM, informed the tenants the issue was systemic and the whole wall would need replacing. EC and TB said high humidity levels remain in the rental unit, as shown by the digital meter readings filed into evidence.

EC said that there were many other trades people, at least 7, coming into the rental unit to correct the issue with the bathroom fan, causing disruption to the tenants.

TB said that he owns an HVAC company and said there is no ventilation in the rental unit due to the lack of fresh air flow.

The tenants confirmed that there has not been any mold reappearing in the master bedroom.

Additional filed evidence included written documents, which included photographs of the wall under the window, the windowsill and the baseboards, copies of text messages and email communication between the relevant parties.

Landlord's response –

The landlord, CA, submitted that they made a timely response to the tenants' requests. The landlord said that on November 27, 2020, the tenants made contact to the resident manager, who was out of the office that day. On December 1 and 3, the tenants texted the resident manager, and on December 4, EC emailed CA.

CA said that on December 6, 2020, DM and others visited the rental unit and on December 9, 2020, contractors were in the rental unit, starting remediation.

On December 12, 2020, the remediation was completed; however, CA pointed out that the tenants filed for application for dispute resolution on December 11, after remediation had begun.

CA said there were only 3 unsuccessful attempts to contact the resident manager, but the matter was dealt with immediately after contact the senior property manager. CA said the matter was resolved in 16 days, or 11 business days, after first contact by the tenants.

CA said that some of the problems worsening the mold situation, was the lack of air flow, as EC had her mattress and chest of drawers pushed against the wall.

DM said there had to be a miscommunication with the tenants, as he never told them a wall had to be replaced. DM said the tenants' issue was resolved earlier.

Tenants' monetary claim –

EC's monetary claim is \$1,688.54, described as 4 days lost from work at a rate of \$28.85/hour x 8 hours and \$767 for her portion of the rent paid for December 2020, as she was not able to reside in her room since November 27th.

EC said she lost work due to sickness and that her bedroom was not habitable.

Landlord's response –

CA said there were no records submitted that the tenant lost income.

CA reaffirmed that the bedroom was completely repaired within 16 days, and that the tenant still had the use of the other parts of the rental unit, such as kitchen, bathroom, and living room during the entire time.

CA argued that monetary compensation to the tenants must only be based upon a landlord's failure, which was not the case here.

Filed into evidence by the landlord were pictures of the completed work showing the walls, baseboard, and window.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Request for an order for repairs and landlord's compliance with the Act –

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's agent, CA, dealt with the tenants' requests concerning the repairs mentioned above. While the tenants' initial request to the resident manager may have gone unanswered, the repairs were dealt with immediately upon contact to the senior property manager. I find support for the landlord's assertion that the repairs, which included drywall removal, were started and finished within 16 calendar days or 11 business days. Considering that the landlord would be reliant on contractor's schedules, I find the evidence shows that the landlord complied with their obligation under the Act to address the tenants' repair requests regarding mold in the rental unit in a timely manner and I find this response to be thorough and complete.

Additionally, I find the tenants submitted insufficient evidence to support their claim that the repairs were not yet completed, as a wall has not been removed and replaced. The landlord's agent, DM, denied making that statements to the tenants, and I find the fact the mold has not returned since the repairs were completed was compelling and persuasive.

I find on a balance of probabilities that the repairs had been made. I therefore dismiss this portion of the tenants' application.

Tenants' monetary claim –

Under section 7(1) of the Act, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Section 7(2) also requires that the claiming party do whatever is reasonable to minimize their loss. Under section 67 of the Act, an arbitrator may determine the amount of the damage or loss resulting from that party not complying with the Act, the regulations or a tenancy agreement, and order that party to pay compensation to the other party. The claiming party has the burden of proof to substantiate their claim on a balance of probabilities.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I find the tenant submitted insufficient evidence that she suffered a loss as a result of being off work. I would expect the tenant to have provided documentary evidence, such as a physician's note or work records.

As to the tenant's claim for compensation for loss of use of the rental unit, repair issues may occur from time to time; however, such events do not automatically entitle a tenant to compensation. Rather, I find the tenant must demonstrate that the landlord was aware of the problem and was negligent in dealing with the problem which caused the tenant to suffer a loss of use of the rental unit or loss of quiet enjoyment of the unit. Negligence may include inadequate or an unreasonably delayed response to a known problem.

In the case before me, I have previously found that the landlord took timely and sufficient action to address the mold issue in the rental unit and find they were not negligent in their response to the tenants' repair requests. Upon a review of the tenants' photographs showing a large amount of mold in the master bedroom, I, however, find a devaluation of the tenancy occurred, through no fault of their own or the landlord.

I, however, find the amount being claimed by the tenant to be excessive for the following reasons. Firstly, the tenant claimed the tenancy was devalued by \$767, meaning that she has claimed that she lost 100% of the value of her portion of the rental unit for the entire month of December 2020.

I do not find that the lack of use of the bedroom for the 13 days in December equals 100% of the value of the tenancy.

The tenant still had her full rental unit, other than her bedroom to use and enjoy, such as her kitchen, bathroom, entertainment and/or internet usage.

Policy Guideline #16 notes, "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 [that may be granted] 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."

I find an award of nominal damages would be more appropriate in this circumstance as I have found the landlord was not negligent, but that a devaluation of the tenancy occurred.

I find an award of 25% of the daily rate for each of the 13 days to be reasonable in the circumstances.

I therefore award the tenant the amount of **\$80.41** ($\$767 \div 31$ days in December = \$24.74 daily rate x 13 days = \$321.62 x 25% = \$80.41).

As the tenants had some success with their application, I also award the tenants recovery of their filing fee of \$100.

Conclusion

The tenants' application has been granted in small part.

I have granted the tenants a monetary award of \$180.41, comprised of \$80.41 for devaluation of the tenancy and recovery of the filing fee of \$100.

I direct the tenants to withhold the amount of \$180.41 from the next, or a future month's rent payment in satisfaction of their monetary award. The tenants should advise the landlord when the deduction is made in order to ensure the landlord does not serve the tenants a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

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: March 3, 2021

Residential Tenancy Branch