



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, RP, FFT

Introduction

The Tenant filed an Application for Dispute Resolution on February 3, 2022 seeking repairs to the rental unit, and a reduction in rent for repairs agreed upon but not provided. They also requested reimbursement of the Application filing fee.

The matter proceeded by way of a hearing on May 6, 2022 pursuant to s. 74(2) of the *Residential Tenancy Act* (the “*Act*”). In the conference call hearing I explained the process and provided each party the opportunity to ask questions.

The Tenant and an agent for the Landlord (hereinafter the “Landlord”) both attended the hearing, and I provided each with the opportunity to present oral testimony. In the hearing, the Landlord confirmed they received the notice of this hearing and the Tenant’s evidence via registered mail. The Tenant verified they received the landlord’s evidence via registered mail.

Issue(s) to be Decided

Is the Landlord obligated to repair issues identified by the Tenant, pursuant to s. 32 of the *Act*?

Is the Tenant eligible for a reduction in rent, for repairs agreed upon but not provided, pursuant to s. 65 of the *Act*?

Is the Tenant eligible for reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

The Tenant provided a copy of the tenancy agreement for the rental unit. The rental unit is one of 5 suites in the house. Both parties signed the agreement on May 26, 2021 for the tenancy starting on June 8, 2021. The rent agreed to was \$1,375. The agreement sets out obligations for both the Landlord and the Tenant regarding repairs. These terms conform with the *Act*, and there was no other addendum or piece of the agreement stating otherwise.

In the Application, the Tenant stated the problem thus:

There is a sewer smell emanating from the drains in my apartment that clings to my clothes and self. I smell even after having a shower, & people have commented on it at my job. When friends come over, they mention it when using my bathroom. The smell causes me to have headaches, to be nauseous, & at its worst has made me sleep elsewhere overnight.

In the hearing the Tenant described that the smell “really started becoming noticeable in September [2021]”. They confirmed the nature and degree of the smell with the other residents from other rental units within the building. They requested on either a weekly or biweekly basis that the Landlord visit to examine the smell, and a plumber visited in February 2022 to inspect the problem. According to the Tenant, the Landlord always stated “yes, approved” but from September through to January they did not visit to the rental unit to inspect. The Tenant presented that the Landlord would say to them, in paraphrase, ‘you got to do what you got to do’. They took this to mean they were free to move out from the rental unit without reprisal.

The Tenant provided that within 24 hours of their serving the Notice of this dispute resolution proceeding, a plumber visited. Upon their visit, according to the Tenant, the plumber stated, “that’s dank” and “it’s absolutely mould” and confirmed it was not a sewer gas smell. From this, the Tenant concluded the rental unit and/or building must be remediated.

The Landlord provided a copy of the invoice from the plumber, stated February 22, 2022. This gave the following detail:

- Noticed a dank wet smell – not so much a sewer gas smell
- Observed potential spots where water could possibly get in behind tub stall and could cause mould.
- Recommend the tenant pour water into the tub drain once a day to keep p-trap level up. Also recommend the tenant leave the fan on longer to assist in circulating the air.
- If necessary, can cut behind the shower and assess if there is mold (not sure if the drywall has asbestos in it).
- Monitor the smell for 1 week.

In the evidence, the Tenant provided the following:

- their email to the Landlord on December 9, 2021 stating they messaged on October 11, 28 and November 21. No plumber arrived on November 22 as stated by the Landlord. They set out the smell giving them headaches, causing nausea when using the bathroom. They outlined this as either a sewer gas value issue or a mould problem that can impact health.
- By text message on October 28 they advised another building resident experienced a similar smell in their kitchen.
- By text message on November 21 they advised of a continued smell. The Landlord advised the plumber would come the following day; however, by November 25 the Landlord advised the plumber did not attend.
- On December 17, the Tenant advised the Landlord they were filing a dispute. They advised: "I've owned a home prior to living here . . . [and] I've not had to wait 2 months for someone to come check something out."
- On December 19, the Landlord advised they were checking with the 3rd plumber they contacted.
- A message from the other resident of October 10, advising of "a pretty persistent sewer smell coming from my kitchen drain". This resident followed up with further requests on October 28 and November 1.

The Tenant attended the hearing with witnesses, two of whom also provided written statements of their experience:

- witness A in the hearing described the smell as going away, but then coming back. They clarified that contact with the Landlord was "intermittent". In their statement, they "believed [the smell] was coming up from the drains; however this "worked mildly to mitigate the smell." They set out their communication with the Landlord which ran through November 2021. They had a request for a plumber visit from the Landlord on February 15 the following day, and "there are other [smells] that I swear come from under both my sinks and make my dishes and bathroom smell."
- Witness B in the hearing stated they had witnessed the Tenant's discussions with the Landlord on this, e.g., the Landlord stated "someone will be around." They almost vomited on one occasion because of the smell. They stated the Tenant was living with them "probably 75 – 80% of the time because of the odour reason". They described the smell as "more noticeable [in its impact] the more time you spend out of it." In their written statement, they gave the specific timeline of September 2021 as the start of "a dank, gross smell."

- Witness C, a former resident in the building, noticed wallpaper as “damp and bubbling” due to water soaking through, because “it seems that there was some leak.” They noted they never personally experienced the smell but attesting to their observation of water collection in October 2021.
- Witness D is a newer Tenant and attested to their move-in inspection meeting with the Landlord, who observed mould and a toilet leaking. They observed that previous unit’s tenant had left the Condition Inspection Report behind, and this specifically noted mould around windows and in that unit’s bathroom. They attempted to alleviate the mould issue on their own. At some point, this left them “sick with a hacking cough.”

The Tenant in the hearing set out it was becoming noticeable in September 2021, then getting worse as autumn progressed. They had the opportunity to compare this to the smell present in Witness A’s rental unit; however, they found the smell in that other unit was not as strong. In the hearing the Tenant also set out their interaction with the Landlord on this topic, as presented in their written statement.

In sum, the Tenant claims:

- \$33.36 for drain covers they purchased in October to contain the smell
- \$4,800, being rent reduction of \$600 per month, retroactively from October 2021 to the present month of May 2022, for “health effects, disruption to my work and personal life.”

In response to this, the Landlord noted how the Tenant had the opportunity to inspect the rental unit prior to moving in. They specifically noted to the Tenant at that time that it was not a brand-new building. They reiterated this position in the hearing, stating “not a luxury property” and the scent is due to aging. They posited that if the Tenant is sick, then why stay at the rental unit, and “every tenant knows they can move”.

Regarding the possibility of mould, they checked the rental unit bathroom and ceiling and found no evidence of leaks or discolouration on the drywall. They also pointed out that the Tenant presented no evidence of mould, such as pictures.

In response to the Witness C testimony, the Landlord provided that the issue was a leak from the top floor of the building, due to heavy rain at that time. They performed no work in response to this issue made known to them by Witness C.

In their evidence, the Landlord presented a written statement dated April 28, 2022. This set out that they “never had any leak, wet drywall, or mold occurring complains from the neighbours residing downstairs or on the other side of the wall.” There were complaints of a

smell only from 2 of 5 total units in the building. The Landlord interpreted the plumber's invoice account as "the plumber's conclusion [that] there are no leaks or [sewage] problems that need repairs."

Analysis

The *Act* s. 32 sets out a landlord's obligation to repair and maintain residential property. This is in a state that "complies with the health, safety and housing standards required by law."

I find the Landlord is positively obligated here to repair and maintain the rental unit as long as they obtain rent from tenants who live in that building. The Landlord did not present evidence that they fulfilled their obligation to maintain the residential property in a state that complies with health and safety standards. Any access or living arrangements by any of the residents at that property mandates that work towards that end be completed in line with the *Act*.

I find the Landlord has not substantially addressed the concerns of the Tenant here. A plumber visited and ruled out sewage line issues as causing a smell; however, they were inconclusive on the presence of mould. Given the plumber's direct statements to the Tenant as reported in this hearing, I find the Landlord is compelled to investigate the Tenant's claim further. In sum: the plumber's visit was a preliminary step in resolving that issue and the Landlord is obligated to complete further work.

I order the Landlord to continue with the work and complete a further assessment/investigation. Again, this is mandated by s. 32 of the *Act* for this area in the residential property that definitely is accessible and constitutes a core living area of the Tenant here. They must investigate forthwith, and then proceed with needed work. It is not enough to say the building is simply old; rather, the Tenant is credible on ill effects they are suffering that have led them to temporarily reside elsewhere in these circumstances.

More specifically: the Landlord must have a certified restoration technician attend to inspect, and if needed repair the areas which may be impacted by mould. The Landlord must provide the written findings and subsequent details of repair to the Tenant.

On the issue of compensation, under s. 7 of the *Act*, a landlord or tenant who does not comply with the legislation or their tenancy agreement must compensate the other for damage or loss. The *Act* s. 65 grants authority to make an order granting rent reduction:

. . . if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f)that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

For this consideration, I find the Tenant's freedom from unreasonable disturbance in this living arrangement has been impacted in a unique way. Primarily through the account of witness B, I find the Tenant has presented compelling evidence of the value of the loss of full normal use of the rental unit. They are having to make consideration for clean, smell-free air, when washing their clothes and when simply staying within the rental unit. Their evidence on having to stay elsewhere occasionally because of this smell was compelling on this singular point.

I find there has been a reduction in the value of the tenancy agreement. This has existed from the time the Tenant noticed the problem and made their inquiries to the Landlord, through to the present time with the issue as yet unresolved.

For the period of time the issue has persisted – that is, the full months of November 2021 through to May 2022 – I order a retroactive rent reduction in the amount of \$200 for each of these calendar months. By s. 67 of the *Act*, I award the Tenant of recovery of this amount. The Tenant is authorized to deduct the amount of \$1,400 from upcoming rental payments in satisfaction of this award.

Going forward, I authorize the Tenant to deduct the amount of \$100 per month from rent until the Landlord complies with the above noted order for repairs. This reduction in rent commences in July 2022. This includes any work recommended and/or required by a certified restoration technician. This is where the written findings and subsequent details of repair in writing to the Tenant are essential.

Given the nature of work to be undertaken by the Landlord here, I make no separate award to the Tenant for their purchase of drain covers. That was done without a positive identification of the drains and/or sewage system being the likely source of the smell and its ill effects.

As the Tenant was successful in this Application, I find the Tenant is entitled to recover \$100 of the filing fee they paid for this Application.

Conclusion

I order the Landlord to complete an investigation and/or remediation of the affected area by the earliest possible completion date.

I find the Tenant is entitled to a rent reduction in the amount of \$1,500. This is for the past rent reduction as well as recovery of the Application filing fee. I authorize the Tenant to withhold this amount from future rent payments.

Going forward, I authorize the Tenant to withhold \$100 from future rent payments until the Landlord complies with the above noted orders for inspection and/or repairs. This reduced rent commences in July 2022. This reduction applies *only* if the Landlord fails to comply with the specific orders noted above.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: May 13, 2022

Residential Tenancy Branch