



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AMBASSADOR INDUSTRIES LTD CLAREMONT
TERRACE and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT, MNDCT, RP, RR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 09, 2022 (the “Application”).

The Tenant filed the original Application and amendments. The original Application and amendments include the following requests:

- For an order that the Landlord make emergency repairs
- For compensation for monetary loss or other money owed
- For an order that the Landlord make repairs
- To reduce rent for repairs, services or facilities agreed upon but not provided
- To recover the filing fee

The Tenant appeared at the hearing. C.G. and S.G. (the “Agents”) appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (“the Rules”). The parties provided affirmed testimony.

At the hearing, the Tenant clarified that they are seeking the following:

- Compensation for monetary loss or other money owed
- An order that the Landlord make repairs
- To recover the filing fee

The Tenant advised that they have another file, File Number 695, which is set for hearing in November. After some discussion, it was determined that the Tenant would

deal with all compensation requests on File Number 695 and only deal with the request for a repair order and the filing fee on this file. The decision that compensation would be dealt with on File Number 695 was mostly due to it not being clear in the Application, amendments or materials submitted what the Tenant is seeking for compensation.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I have only referred to the evidence I find relevant in this decision.

I note that the Agents for the Landlord had to be told approximately four or five times throughout the hearing not to interrupt me or the Tenant while we were speaking.

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord make repairs to the unit or property?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Tenant seeks an order that a certified professional attend the rental unit to assess whether there is mold in the wall and/or ceiling of the living room and to have it repaired if there is mold.

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started August 01, 2021.

The Tenant testified that there have been leaks in the rental unit since August 17, 2021, when they notified the Agents of a leak above the stove. The Tenant testified that there was a further leak in the kitchen/living room in November of 2021. The Tenant testified about the Agents lack of response, or delays in responding, to the Tenant about the reported leaks. The Tenant also testified about delays in addressing the leaks in the rental unit. The Tenant testified that the ceiling of the rental unit started to cave in due to the leaks and it being wet from August of 2021 to February of 2022. The Tenant

testified that in March of 2022, the ceiling was getting worse, the ceiling was wet, there was a mold smell in the rental unit and light fixtures were flickering due to the leaks. The Tenant testified that they had to air out and clean the rental unit daily due to the smell of mold. The Tenant testified that in March of 2022, mushrooms grew in the living room carpet below the wall where the leak in the ceiling was.

The Tenant submitted that they think there is mold in the rental unit because there have been active water leaks from August of 2021 to March of 2022. The Tenant testified that one of the walls in the rental unit was so wet at one point that they could push their thumb into it. In relation to there being physical evidence of mold, the Tenant pointed to 15 photos in evidence and submitted that dark areas can be seen on the walls. The Tenant testified that the ceiling also has water damage marks on it.

The Agents for the Landlord disputed that an order to assess the rental unit for mold and repair mold is necessary.

The Agents testified that there was a fire in the unit above the rental unit and water was used to put out the fire. The Agents testified that some water did leak into the bedroom of the rental unit. The Agents testified that the leak was taken care of immediately. The Agents testified that a restoration company put a dehumidifier in the rental unit, ripped up the carpet and changed the underlay immediately after the leak in the bedroom. The Agents testified that the leak in the living room of the rental unit was small as shown in the photos. The Agents testified that when they were in the rental unit and noticed the exhaust vent leaking, the roofing company attended the following day and put a temporary patch on the roof and then a full patch a few days later. The Agents testified that there has been no water leak in that area since.

Agent C.G. testified that the Tenant sent text messages about leaks in the rental unit often and they responded as quickly as they could. The Agents testified that a restoration company attended the rental unit three times and took moisture readings and did mold tests, all of which were negative. The Agents testified that moisture readings were taken in the rental unit three or four times, and everything was dry. The Agents denied that water was running down the walls of the rental unit at any point. The Agents testified that there are no visual signs of mold in the rental unit. The Agents testified that any leaks or water issues in the rental unit were addressed in a timely manner and therefore there was no chance for mold to grow. The Agents denied that walls were ever wet enough to push a thumb into. The Agents denied that there is mold

in the rental unit. The Agents testified that the wall the Tenant is concerned about having mold in it does not have insulation in it that could grow mold.

I have reviewed the documentary evidence submitted and will refer to it below as necessary.

Analysis

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

The Landlord's obligation to maintain the rental unit is set out in section 32 of the *Act* as follows:

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.

Based on the testimony of the parties, photos and text messages, I am satisfied there have been numerous instances of water leaking into the rental unit throughout the tenancy. However, I find the Landlord's documentary evidence shows that leaks and resulting moisture issues were addressed. Further, the Landlord's documentary evidence shows moisture readings in the rental unit were done in October of 2021, January of 2022 and March of 2022, all of which showed the areas tested were dry. I have reviewed the photos submitted and do not see obvious visible signs of mold in or on the wall or ceiling of the living room.

This is the Tenant's Application, and the Tenant has the onus to prove that a repair order is necessary. I find the Tenant does not know if there is mold in the wall or ceiling of the living room because the Tenant stated at the hearing that they want a repair order for "potential" mold and the Tenant is seeking an assessment of whether there is mold. The Agents deny that there is mold in the rental unit.

In my view, a request for a repair order should be a request to repair a known issue. Here, there is no known issue or known breach of section 32 of the *Act*. I do not find that there is sufficient compelling evidence before me to show that there is mold in the wall or ceiling of the living room. I find the Tenant has failed to provide sufficient compelling evidence that there is a real concern about there being mold in the wall or ceiling of the living room.

In the circumstances, I decline to order the Landlord to have an assessment done or to repair mold that neither party knows is in existence. I dismiss the claim with leave to re-apply on the condition that the Tenant provide an assessment from a certified professional confirming there is in fact mold in the wall and/or ceiling of the living room. If the Tenant obtains a mold report from a certified professional showing there is in fact mold in the wall and/or ceiling of the living room, the Tenant can re-apply to the RTB to have the Landlord repair the mold if the Landlord is unwilling to do so on their own accord.

Given the Tenant has not been successful in the Application, I decline to award the Tenant reimbursement for the filing fee and this request is dismissed without leave to re-apply.

Conclusion

The request for a repair order in relation to mold in the wall and/or ceiling of the living room of the rental unit is dismissed with leave to re-apply on the condition that the Tenant can provide an assessment from a certified professional confirming there is in fact mold in the wall and/or ceiling of the living room.

The request for reimbursement for the filing fee is dismissed without leave to re-apply.

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

Dated: June 28, 2022

Residential Tenancy Branch