



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RR, RP, OLC, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for repairs to the unit, the Landlord has been contacted in writing to make repairs, but they have not been completed pursuant to Section 32 of the Act;
2. An Order for the Landlord to comply with the Act, regulations, and tenancy agreement pursuant to Section 62(3) of the Act;
3. An Order to reduce rent for repairs, services or facilities agreed upon but not provided pursuant to Section 65 of the Act; and,
4. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager and Building Manager, and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Tenant's Notice of Dispute Resolution Proceeding package and evidence served by registered mail on June 3, 2022, deemed served on June 8, 2022; and,
- the Landlord's evidence package served by placing the package in the Tenant's mailbox on September 5, 2022, deemed served on September 8, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

Preliminary Matters

RTB Rules of Procedure 7.8 and 7.9 provide me with the authority to adjourn hearing proceedings and read as follows:

7.8 Adjournment after the dispute resolution hearing begins: *At any time after the dispute resolution hearing begins, the arbitrator may adjourn the dispute resolution hearing to another time.*

A party or a party's agent may request that a hearing be adjourned.

The arbitrator will determine whether the circumstances warrant the adjournment of the hearing.

7.9 Criteria for granting an adjournment: *Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

The Tenant stated he had lots of items that he needed to discuss. He argues that the Landlord has given false evidence. The Landlord said if the Tenant is permitted an adjournment, he will just go on and on.

I find that providing an adjournment will not result in resolution of the matters in this tenancy. I explained to the Tenant that these RTB hearings are one hour long, and parties need to concisely present their evidence with a clear evidence chain. I decline to grant an adjournment. However, I am dismissing the Tenant's claims which we did not have time to hear at this hearing with leave to re-apply.

Unrelated Claims

Prior to the parties' testifying, the Tenant asked if we could get to all his matters on the hearing day, but if not, that he would be allowed to speak to them on another day or he could re-apply. RTB Rules of Procedure 2.3 authorizes me to dismiss unrelated claims contained in a single application. The Tenant had indicated different matters of dispute on his application, and we began discussing his requests for repairs to the rental unit. I will consider only the Tenant's requests for repairs to the rental unit, and his other claims are dismissed with leave to re-apply.

Issues to be Decided

1. Is the Tenant entitled to an Order for repairs to the unit?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on March 1, 2018. The fixed term ended on February 28, 2019, then the tenancy continued on a month-to-month basis. Monthly rent is \$1,558.00 payable on the first day of each month. A security deposit of \$750.00 was collected at the start of the tenancy and is still held by the Landlord.

Tenant's Evidence:

Front door

The Tenant testified that his entrance door is broken. His documentary evidence reports that *"The Door frame , casing and door itself are cracked and it's very unsecure, somebody can break in very easy , it looks like somebody already tried before ."* He included undated pictures that point to a possible small crack in one top corner of the door frame. One video evidence shows how the crack opens and closes when the Tenant is pushing on the door head jamb. The second picture evidence shows a crack in the door jamb. One video evidence shows again the crack in the door jamb and a

small crack in the edge of the door panel where the door latch is located. The Tenant is requesting that the door frame be replaced, and that this is needed for safety reasons.

Mould Growth

The Tenant provided evidence that there was a leak from bathroom faucet on June 13, 2020. He said he contacted the Landlord, but then replaced the faucet himself. He testified that the hall carpet was soaking wet, and he bought a heater to dry the carpet. The Tenant said by September 18, 2020 mould was appearing in the carpet. He said the Landlord did not arrange to send in a mould inspector. He uploaded three undated pictures showing spots on the hallway wall where paint was peeling, and he felt there was a mould concern.

The Landlord organized a mould inspection from an environmental technician. The Tenant uploaded the undated report. The report notes:

Technician Note: All areas of concern are related to ware and tare. The building was built in 1965 and has been occupied by different tenants over the years. Most items that were pointed out by the tenant are to be accepted in an original unit with no upgrade renovations.

...

Hallway –

- *Edges of carpet are dark. This is likely from improper vacuuming and cleaning*
- *Wall beside guest bathroom has a small amount of mold at the bottom from a floor [sic] over a year ago – Sink overflowed. It was reported to strata. The drywall is reading dry but would suggest removing the drywall.*

On November 5, 2021, the Landlord wrote an email saying,

...The good news is that there is no mold due to wet walls or moisture found in the unit with exception of acceptable condensation around windows and small area of mold found by the bathroom wall that was probably caused by the flood from June 14, 2020, when someone in your unit left the tap on and water went on the floor and into unit [XXX]. You told the manager at that time that there are no issues in your unit; since then mold might have appeared. We are waiting for [company] to provide quote for some repairs in the unit

and we also contacted another contractor and waiting to hear if he is able to do the repairs.

The Tenant argued after that email, the Landlord took no steps to remediate the mould.

The Tenant contracted his own mould inspection company to assess his rental unit and a report was prepared dated November 23, 2021. This report determined that the apartment is classified as having a “Moderate Problem” of mould growth. This company took bio-tape samples and found:

Kitchen	Sink countertop	Penicillium/Aspergillus sp (single spores)
		Cladosporium sp (full structures)
Kitchen	Underside of countertop (back)	Stachybotrys sp (full structures)
Hallway	Drywall (East wall/floor)	Chaetomium sp (full structures)
Hallway	Drywall (East wall)	Penicillium/Aspergillus sp (full structures)
Hallway	Drywall (South wall)	Chaetomium sp (full structures)
Hallway	Drywall (North wall)	Chaetomium sp (full structures)
Child's bedroom	Back of television	Basidiospores sp (single spores)
Master bedroom	Visible mould on window surface	Stachybotrys sp (full structures)

The remediation and decontamination suggestions for the hallway in the rental unit are:

We observed and identified toxigenic mould growth on the drywall (North, South and East) in this area.

Drywall to be removed 2ft in height (North, South and East). If further mould growth is found, a further 2ft of drywall will need to be removed and the exposed wall cavities decontaminated. There is a high potential that further toxigenic mould growth exists within the wall cavities and under the carpet. The carpet to be rolled back to determine if mould growth has occurred under the carpet. If confirmed the flooring will need to be decontaminated. The carpet may need to be replaced if it is not possible to remove the mould growth. (Follow standard mould remediation protocols).

The East wall shares a wall with the bathroom. Water ingress that occurred in the bathroom (countertop/vanity) may have affected the building material in the hallway.

Master Bathroom

The Tenant uploaded pictures of what he called mould under the master bathroom countertop. The Tenant also uploaded pictures of the top of the countertop which he explains is '*inflated and mold concern*'. The Tenant took pictures of the cabinet faces in the bathroom, and he writes '*Every time when I clean cabinets paint fall off which make imposible to maintain my apartment in clean in conditions , bacteries can stay in this efficient environment for bacteria*'. The Tenant took a final picture of a broken vanity cabinet.

The Tenant relies on his own mould inspection company remediation and decontamination plans, as:

There is moisture damage in a section of building material within the master bathroom (bath/floor junction corner). Although the area is currently dry, it should, however, be remediated and decontaminated due to degradation and mould growth.

Water ingress has occurred into the countertops in both bathrooms. There is damage to both vanities. The cabinets will need to be removed in order to inspect surrounding building material (drywall behind the cabinets and flooring under the vanities). Should mould growth and/or high moisture be found behind and under the vanities, additional building material will need to be removed and the exposed areas decontaminated. The countertops will need to be replaced due to degradation. It may not be possible to salvage the vanities.

Caulking/grout to be inspected in the bathrooms and repaired as required.

The extractor fans in both bathrooms need to be inspected for efficiency and repaired/replaced as required.

Landlord's Evidence:

The Landlord testified that this is their third time in arbitration with this Tenant. The Landlord maintains that the repairs are 99% completed. In 2020, when the Tenant brought up the issues with his front door, the Landlord stated that the front door was repaired in July 2020. The Landlord provided a six page summary of work completed in the Tenant's rental unit.

Two contractors that the Landlord brought in to assess evidence of mould found there was no mould, with the exception of a small area by the closet near the bathroom. One contractor said there is no mould under the sinks in the rental unit but only water stains. The second contractor reported that the countertop is starting to rot due to water spillage. This contractor questioned does the Tenant wipe off excess water immediately or do they leave water sitting on the countertop?

On June 14, 2020, the Building Manager received a text message from the Tenant about a leak originating in his rental unit. The Tenant informed the Building Manager that no action was required because he caused the leak. The Building Manager said that the Tenant went out and bought two heaters on that same date. The Tenant gave one heater to the tenant below him, and the other heater he kept for himself. On June 15, 2020, the Building Manager went into the Tenant's rental unit, and she said there was no visible leak observed. On June 17, 2020, the Building Manager called an expert mechanic to change the shut-off valve in the Tenant's bathroom. On that same date, the Building Manager's husband replaced the bathroom faucet, and it was determined that the bathroom faucet had nothing to do with the leak.

The Landlord's environmental technician found a small bit of mould in the kitchen and the bathroom, but the expert attributes this to the fact that the Tenant is probably not drying the countertops. The environmental technician determined that the mould is not dangerous and just needs to be cleaned up with a mould cleaning product. The mould inspection company the Tenant retained did not reply to the Landlord's questions to tell whether the mould was dangerous. The Landlord recently went into the Tenant's rental unit, and there was no visible mould in the areas the Tenant claimed he saw mould.

The Landlord reports that as “[S]oon as we mention to contractors that tenant is in the unit and does not want to keep more than 2 m apart, is watching them while the job is being done, records them or may call WCB on them, contractors are not willing to attend.” The Landlord testifies that lots of work has been completed in this rental unit.

The Landlord states that the only outstanding issue is the repair/replacement of the countertop in the kitchen. The Landlord testified that they are willing to replace the kitchen countertop, but they need the Tenant to stop interfering with their contractors – no recording them while they are working, no harassing them while they are doing the job.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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.*
- (2) *A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

...

Mould Growth

Both the Tenant's expert and the Landlord's expert regarding the mould growth in the rental unit agree that there is a small amount of mould present in the hallway near the bathroom in the rental unit. The Landlord's expert also stated there is some mould growth in the kitchen of the rental unit.

Neither expert committed that the mould presence is dangerous, although the Tenant's expert claims the species of moulds they determine are present could be toxigenic. Toxicity is certain at the species level, but neither of the environmental experts committed beyond the genus level of mould finds. I find, based on the evidence submitted by both parties, that the mould presence is small, and probably not toxigenic. I Order, pursuant to Section 32 of the Act, the Landlord to remediate and decontaminate the mould that was found in the hallway and the kitchen in the Tenant's rental unit.

Kitchen countertop

The Landlord states that the only outstanding issue is the repair/replacement of the countertop in the kitchen. The Landlord testified that they are willing to replace the kitchen countertop, but they need the Tenant to stop interfering with their contractors – no recording them while they are working, no harassing them while they are doing the job. The Landlord provided a long list of repairs that have occurred in the Tenant's rental unit. I find the Landlord's repair history testimony compelling. I Order the Landlord to have the kitchen countertop replaced by a qualified repairperson no later than November 14, 2022. I caution the Tenant to not interfere with that replacement work so that tradespeople can go about their business undisturbed.

I find that repairs to the front door have been completed, and the repairs to the Tenant's bathroom vanity have been completed.

As the Tenant is partly successful in his claim, he is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

Conclusion

I Order the Landlord to remediate and decontaminate by a qualified environmental technician the mould that was found in the hallway and the kitchen in the Tenant's rental unit by November 14, 2022.

I Order the Landlord to have the kitchen countertop replaced by a qualified repairperson no later than November 14, 2022.

The Tenant may withhold \$100.00 from next month's rent due to the Landlord to recover his application filing fee.

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: October 17, 2022

Residential Tenancy Branch