



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SALVINGTON LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes ERP, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant November 21, 2022 (the "Application"). The Tenant applied as follows:

- For an order that the Landlord make emergency repairs
- For reimbursement for the filing fee

The Tenant appeared at the hearing with M.W. to assist. P.S. 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.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

P.S. confirmed receipt of the hearing package and some of the Tenant's evidence. P.S. testified that they received the Tenant's evidence up to November 25, 2022, but not the evidence sent after which was sent to their spouse and which they have not had an opportunity to review.

The Tenant confirmed receipt of the Landlord's evidence and testified that they had reviewed it and were prepared to address it.

The Tenant submitted evidence to the RTB November 21, 23, 24, 25 and 29 as well as December 13 and 15. The Tenant submitted proof of service for the November 23 and 25 service dates.

I cannot tell from the Tenant's proof of service documents what was served on the Landlord when.

This matter was an expedited hearing, and the Tenant was given an early hearing date. The Tenant was required to comply with rule 10 of the Rules which states in part:

10.2 Applicant's evidence for an expedited hearing

An applicant must **submit all evidence** that the applicant intends to rely on at the hearing **with the Application for Dispute Resolution**.

10.3 Serving the notice of dispute resolution proceeding package

The applicant must, **within one day** of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- the Respondent Instructions for Dispute Resolution;
- an Order of the director respecting service;
- the Expedited Dispute Resolution Process Fact Sheet (RTB-114E) provided by the Residential Tenancy Branch; and
- **evidence** submitted to the Residential Tenancy Branch online or in person, or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 10.2 [Applicant's Evidence Relating to an Expedited Hearing].

The RTB provided the hearing package to the Tenant November 22, 2022, and therefore the Tenant's evidence had to be served by November 23, 2022. I have admitted the Tenant's evidence served and uploaded on or before November 25, 2022, because the Landlord acknowledged receipt of this.

I exclude the evidence uploaded by the Tenant November 29 because I am not satisfied it was served on the Landlord in accordance with the Rules, it is not new because it is dated November 16, 2022, and I find it would be unfair to the Landlord to consider it when they have not had time to review it.

I exclude the evidence uploaded December 13 because I am not satisfied it was served on the Landlord in accordance with the rules, not satisfied the relevant audio is new because it is dated November 27, 2022, and I find it would be unfair to the Landlord to consider it when they have not had time to review it.

I exclude the evidence uploaded December 15 because I am not satisfied it was served on the Landlord in accordance with the rules, not satisfied it is new because it is text messages with the prior tenant which the Tenant could have obtained prior to making the Application, and I find it would be unfair to the Landlord to consider it when they have not had time to review it.

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

Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord make emergency repairs?
2. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

There is no issue that there is a tenancy agreement between the parties.

The Tenant seeks repair of a crack in the foundation of the rental unit which the Tenant says is allowing water into the rental unit which is causing mold and mushrooms to grow in the rental unit. The Tenant submitted an Abatement Quote from a company that deals with mold and asked that this work be done at the Landlord's cost.

The Landlord disputes that there is a crack in the foundation of the rental unit that is letting water into the rental unit and disputes that there has been ongoing mold and mushroom issues. The Landlord submits that the mold and mushroom issues were caused by a one-time leak from a toilet above the rental unit.

I have reviewed all of the admissible documentary evidence before me including videos, audio recordings, photos, text messages, a mold report, emails and written submissions.

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 occurred as claimed.

The Landlord's obligation in relation to maintaining the rental unit is set out in section 32 of the *Act* which states:

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.

I have focused on the documentary evidence in this matter because I find it to be the most reliable evidence of what has occurred in the rental unit and between the parties in relation to water leaking into the rental unit, mold growing and mushrooms growing.

I find it clear from the evidence submitted that there has been mold and mushroom growth in the rental unit during this tenancy. I also find it clear that there has been water leaking into the rental unit. I do not find it clear where the water and moisture issues are coming from. I do not agree with the Landlord's position that it is clear the water and moisture issues came from a one-time leak from a toilet above the rental unit because I do not find there is sufficient evidence to support this. In my view, the Landlord is making assumptions about where the water and moisture issues are coming from.

It is my understanding from the documentary evidence and submissions that the Landlord sent a proposal for addressing the moisture and mold issues in an email to the Tenant dated October 03, 2022. It is my understanding from the text messages and emails submitted by the Tenant that the Tenant had a mold professional look at the Landlord's proposal, and they confirmed it was a good starting point (see email October 06, 2022, from B.S.). The mold professional suggested that a third party attend the

rental unit after the work is done to run air testing for mold to ensure the air has been cleared (see email October 06, 2022, from B.S.).

I am satisfied based on the evidence submitted that it is appropriate to order the Landlord to follow through with their proposal outlined in their October 03, 2022 email. I find this appropriate because of the evidence of there being mold growth, moisture and water issues in the rental unit during this tenancy. Further, I find from the audio recording of a conversation between the parties and the October 03, 2022 email that the Landlord acknowledges there has been water, moisture and mold issues in the rental unit during this tenancy. I am not satisfied based on the evidence provided that any acceptable steps have been taken to address these issues.

I find it appropriate to order the Landlord to have a third party attend the rental unit after the work outlined in the October 03, 2022 email is done to run air testing for mold to ensure the air has been cleared because I am satisfied there has been mold growing in the rental unit during this tenancy and am not satisfied the Landlord or Tenant are qualified to determine if the mold issue has been properly addressed. I also find from the evidence that the Landlord and Tenant are not able to cooperate or work together on this issue and therefore require a third party to attend the rental unit and ensure the mold issue has been addressed appropriately.

I note that in their written submissions the Landlord states that the work outlined in their October 03, 2022 email has not been done in case further water is leaking into the rental unit in which case the work would be “a waste of time”. The Landlord can address this concern by taking the necessary steps to have the source of the water and moisture issues determined prior to doing the work.

I find it appropriate to order that the work outlined in the October 03, 2022 email and the attendance of a third party after the work has been completed be paid for by the Landlord because the documentary evidence does not suggest that the water, moisture or mold issues have been caused by the Tenant.

Given the above, I order the following pursuant to section 62(3) of the *Act*:

- The Landlord is to complete the work outlined in their October 03, 2022 email, or have someone qualified to complete the work do so, **by January 18, 2023**.

- The Landlord is to have a third party who is qualified to address mold issues attend the rental unit after the work is completed to run air testing for mold to ensure the air has been cleared **by February 01, 2023.**
- The above is to be paid for by the Landlord.

I find the above to be a good compromise and starting point because the evidence shows and states this. If the Tenant finds further mold or mushroom growth in the rental unit after the above has been completed, the Tenant is to take photos or videos of this showing the date the photos or videos were taken, or can again have a mold report completed, and can apply to the RTB for further orders.

Given the Tenant has been successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the Act. The Tenant is issued a Monetary Order for \$100.00.

Conclusion

I order the following:

- The Landlord is to complete the work outlined in their October 03, 2022 email, or have someone qualified to complete the work do so, **by January 18, 2023.**
- The Landlord is to have a third party who is qualified to address mold issues attend the rental unit after the work is completed to run air testing for mold to ensure the air has been cleared **by February 01, 2023.**
- The above is to be paid for by the Landlord.

The Tenant is issued a Monetary Order for \$100.00. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: December 21, 2022

Residential Tenancy Branch