

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes:

RR, MNDC, CNR

Introduction

This hearing was convened in response to an application by the tenant to cancel a Ten Day Notice for Unpaid Rent, a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and an application to allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

Both the tenant and the landlord participated in the hearing and provided testimony, as well as evidentiary submissions.

At the outset of the hearing the parties agreed that the portion of the application requesting to cancel the Ten Day Notice is not required and this portion of the application is hereby dismissed.

The tenant clarified that the request for a monetary order is the equivalent of one month's rent of \$1350, in compensation for "stress endured over the past months" and loss of use of a portion of the rental unit due to issues of water ingress and consequent mold (the problem). The request of rent reduction is for future loss of use of the same portion of the rental unit until the problem is satisfactorily remedied.

Issue(s) to be Decided

Is the tenant entitled to the monetary amount claimed?

Is the tenant entitled to a reduction in rent?

Background and Evidence

This tenancy began on May 01, 2006. Rent in the amount of \$1350 is payable in advance on the first of the month.

There is deep contrast between the evidence and testimony of the parties. Regardless, there is agreement that the rental unit has periodically been experiencing water ingress in the lower portion of the two-level suite, as early as mid 2006.

The tenant claims they have been living with the issue of water in their suite, to one degree or another, with periods of “no flooding” or water ingress. However, the presence of moisture evolved into the presence of mold in the problem area, and this is also a concern to the tenant. The tenant testified that from the outset of the problem the landlord has made various attempts to remedy the water ingress, but has never begun work dedicated to address the problem toward a permanent solution. The tenant is aware the landlord has not only had to deal with water ingress in this tenancy, but also the tenancy next door, with seemingly better results. They have been awaiting the landlord to also resolve *their* water ingress problem, and they claim they have done what they can to accommodate the landlord in order for it to happen, but they have also insisted that the mold must be removed first.

The landlord claims that when they first became aware of the water ingress they dealt with it. The same problem returned during the ‘wet’ season. The landlord acknowledged that the problem is due to the building situated in a high water table, and periodically water must be mechanically pumped out of the building. The landlord also acknowledges being aware that mold has evolved in the water ingress area, and that to their thinking and the advice given to them, the mold will persist until the issue of the water ingress is, first, resolved. Meanwhile, the landlord has determined not to tackle removal of the mold, “as it will only come back” unless the prevention of water ingress is first made permanent. On this thinking the landlord claims they have made several attempts to begin remediation of the problem but the tenant has refused them entry to do the work – wanting the landlord to tackle the mold first. Of course, the tenants have denied they have refused allowing the landlord to do the work.

The tenants claim they determined they could no longer use the problem area of the suite since January 2009 due to water ingress and mold.

The tenant testified the area they are unable to use is approximately 30% of the rental unit. The landlord estimates the area is approximately 15%.

Since January 2009, the two parties have continued in their differences in addressing the problem. The tenants filed for dispute resolution in early March 2009 and the problem remains unresolved on this date. Meanwhile, the same problem next door has reportedly been addressed and resolved to the neighbour's satisfaction. The landlord supplied a signed letter from the neighbour to this effect.

The tenant seeks one month's rent compensation (\$1350) for loss of use since January 2009, and seeks a reduction of rent until the problem is remedied.

The landlord testified the repair work will take one month and they are prepared to begin the work almost immediately if the tenant allows.

Analysis

I have read all submissions and carefully weighed all testimony and evidence of this hearing.

Section 7 of the Act reads as follows:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 32 of the Act reads as follows:

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.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

The Schedule in the Regulations reads as follows

Repairs

8 (1) Landlord's obligations:

(a) The landlord must provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant. The landlord must comply with health, safety and housing standards required by law.

(b) If the landlord is required to make a repair to comply with the above obligations, the tenant may discuss it with the landlord. If the landlord refuses to make the repair, the tenant may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the completion and costs of the repair

(2) Tenant's obligations:

(a) The tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to

which the tenant has access. The tenant must take the necessary steps to repair damage to the residential property caused by the actions or neglect of the tenant or a person permitted on the residential property by that tenant. The tenant is not responsible for repairs for reasonable wear and tear to the residential property.

(b) If the tenant does not comply with the above obligations within a reasonable time, the landlord may discuss the matter with the tenant and may make an application for dispute resolution under the *Residential Tenancy Act* seeking an order of the director for the cost of repairs, serve a notice to end a tenancy, or both.

(3) Emergency repairs:

(a) The landlord must post and maintain in a conspicuous place on the residential property, or give to the tenant in writing, the name and telephone number of the designated contact person for emergency repairs.

(b) If emergency repairs are required, the tenant must make at least two attempts to telephone the designated contact person, and then give the landlord reasonable time to complete the repairs.

(c) If the emergency repairs are still required, the tenant may undertake the repairs, and claim reimbursement from the landlord, provided a statement of account and receipts are given to the landlord. If the landlord does not reimburse the tenant as required, the tenant may deduct the cost from rent. The landlord may take over completion of the emergency repairs at any time.

(d) Emergency repairs must be urgent and necessary for the health and safety of persons or preservation or use of the residential property and are limited to repairing

- (i) major leaks in pipes or the roof,
- (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
- (iii) the primary heating system,
- (iv) damaged or defective locks that give access to a rental unit, or
- (v) the electrical systems.

I find there has been poor, if not disingenuous, communication between the parties surrounding the problem of water ingress and mold and the circumstances surrounding

its remedy; and, this has contributed to not only a poor tenant and landlord relationship, but a lack of co-operation leading to delays in resolving the problem. This appears especially true since January 2009.

I find the area the tenant references as *unusable* since January 2009 equals 22.5% of the rental unit, representing \$303.75 of the monthly value of the tenancy agreement. I find the tenant is entitled to compensation for the loss of use of this area. However, I prefer portions of the landlord's evidence and portions of the tenant's evidence in regards to their level of co-operation in meeting their respective responsibilities under the Act. For example, I believe the landlord made some attempts to remedy the problem and their planning and efforts were turned away by the tenant. At the same time, I am not convinced that the landlord's efforts were full hearted – choosing a wait and see approach. Therefore, I decline to grant the tenant full entitlement to four month's of compensation, and award the tenant compensation for two months in the amount of (303.75×2) **\$607.50**.

I order that the landlord must begin repairs for the water ingress and the mold, forthwith, and, at the landlord's *reasonable* discretion as to how they will proceed with the work.

I order that the tenant must allow the repairs to occur and must not *unreasonably* impede the landlord from completing the work.

I order the tenant may reduce the rent by **\$303.75** only for the month of May 2009. If this amount has already been paid to the landlord, the landlord may choose to reimburse the tenant this amount; or, the tenant may reduce the rent for June 2009, for this amount. In the event the repairs are not completed, or there is a dispute as to the *reasonable* completion of the repairs by May 31, 2009, the tenant has leave to reapply for additional future reduction in rent.

Conclusion

I grant the tenant an order under section 67 for **\$607.50**. If necessary, this order may

be filed in the Small Claims Court and enforced as an order of that Court.

Dated May 01, 2009.