



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss.

The female Tenant stated that on July 23, 2015 the Application for Dispute Resolution, the Notice of Hearing, and three pages of evidence the Tenants submitted to the Residential Tenancy Branch on July 24, 2015 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On December 01, 2015 the Tenants submitted four pages of evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was left in the Landlord's mail box on December 01, 2015. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On December 18, 2015 the Landlord submitted 18 pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was mailed to the Tenants on December 17, 2015. The Tenants acknowledged receipt of this evidence on December 23, 2015 and it was accepted as evidence for these proceedings.

The female Tenant stated that the Tenants submitted 60 pages of evidence to the Residential Tenancy Branch on December 31, 2015. She stated that this package of evidence was placed in the Landlord's mail box on January 02, 2015. The Agent for the Landlord stated that this evidence was received by the Landlord on January 03, 2015.

The parties were advised that I did not have the evidence package submitted by the Tenant on December 31, 2015; that the evidence package was not submitted in fourteen days prior to the start of the hearing, as is required by the Residential Tenancy Branch Rules of Procedures; and that I would not be accepting this package as evidence for these proceedings.

In excluding the evidence that was not submitted until December 31, 2015 I was influenced by my conclusion that the Tenants had ample time to submit this evidence prior to the start of the hearing.

In excluding the evidence that was not submitted until December 31, 2015 I was influenced by the fact I did not have the evidence package and would have had to adjourn the hearing if the evidence was accepted, which I found would be unfair to the Landlord.

The Tenants were advised that during the hearing they could discuss any of the documents submitted on December 31, 2015. The Tenants did not refer to any of these documents during the hearing.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Preliminary Matter #1

At the outset of the hearing the male Tenant stated that his name was spelled incorrectly on the Application for Dispute Resolution. With the consent of both parties the Application for Dispute Resolution was amended to reflect the spelling of the male Tenant's surname, as he provided it at the hearing.

Preliminary Matter #2

Shortly after the hearing commenced the Tenants confirmed that the \$25,000.00 compensation they are claiming relates to the presence of mould in the rental unit and because water was leaking into the rental unit.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for mould and/or a leak?

Background and Evidence:

The Landlord and the Tenants agree that:

- this tenancy began in August of 2008;
- the Tenants agreed to pay monthly rent of \$800.00 for the duration of the tenancy; and
- the tenancy ended on August 31, 2013.

The female Tenant stated that there was:

- mould on every metal window frame in the rental unit;
- mould on the walls below every window in the rental unit;

- mould on the floor in front of every window in the rental unit;
- mould on the north wall of the master bedroom;
- mould on the ceiling of the master bedroom in three places;
- mould in the closet of the master bedroom; and
- mould in the corner of the kitchen.

The Tenants submitted photographs that the female Tenant stated are images of:

- mould in the ceiling of the master bedroom, which was photographed in August of 2013;
- mould in the master bedroom closet, which was photographed in June of 2013;
- mould on a tub that was stored in the master bedroom closet, which was photographed in June of 2013;
- mould on art that was stored in the master bedroom closet, which was photographed in June of 2013;
- mould on the kitchen wall, which was photographed in July of 2013; and
- mould on a window, which was photographed in August of 2013.

The Agent for the Landlord stated that the rental unit was inspected in September of 2013, at which time the Landlord found:

- mould around the sliding door to the balcony;
- mould on the kitchen window sill;
- mould on one window in one of the bedrooms;
- mould in the master bedroom closet, as shown in the Tenants' photographs; and
- mould on the kitchen wall, as shown in the Tenants' photographs.

The Agent for the Landlord that mould was not located on every window or on the walls/floor below any window, with the exception of the area around the kitchen window.

The female Tenant stated that the mould around the windows was first reported to the Landlord in 2010 and was reported thereafter on a regular basis. She stated that every time the problem was reported the Landlord told the Tenants to wipe the windows "twice a day, every day".

The Agent for the Landlord stated that the Tenants may have mentioned mould on the windows "in passing"; that the Tenants "would have" been told to simply wipe the windows; and that they "would not have been told" to wipe the windows twice a day. He stated that the Landlord lives in the lower portion of the residential complex; he has the same type of windows, which do not have mould on them; and he wipes them on a regular basis.

The female Tenant stated that the mould in the bedroom closet was reported to the Landlord in January of 2013. The Agent for the Landlord stated that the mould in the bedroom closet was not reported to the Landlord until they discussed the return of the keys with an agent for the Landlord in September of 2013.

The female Tenant stated that the mould on the kitchen wall was reported to the Landlord in June of 2013. She stated that she did not notice the mould accumulating because it was partially hidden by a table in front of this wall.

The Agent for the Landlord stated that the mould on the kitchen wall not reported to the Landlord until they discussed the return of the keys with an agent for the Landlord in September of 2013.

The Agent for the Landlord stated that after the tenancy ended he checked the attic and did not see any signs of mould or leaks. The Landlord stated that:

- after the stains on the ceiling in the master bedroom were reported the ceiling was bleached and painted, and the stains on the ceiling have not returned;
- after the tenancy ended the windows and walls that had mould on them were washed with bleach and the mould has not returned; and
- after the tenancy ended a portion of the bedroom closet wall and the kitchen wall was cut out and replaced, and the mould has not returned.

The female Tenant stated that the mould on the bedroom ceiling was first reported to the Landlord in January of 2013. She stated that the problem was not addressed until the gutters were replaced on June 19, 2013, although she contends the new gutters still overflowed during heavy rains. She stated that until the gutters were replaced the home only had one downspout, which she speculates has resulted in water leaking into the residential complex for many years.

The Agent for the Landlord stated that the stain on the ceiling was reported to the Landlord in June of 2013. He stated that it was determined water was leaking into the rental unit as a result of faulty gutters, which were replaced on June 19, 2013. He stated that the residential complex has always had two downspouts, both of which were replaced in June of 2013.

The Landlord submitted an invoice from a gutter company, dated June 19, 2013, which outlines a variety of work completed including installing two downspouts. The Tenants contend that the invoice shows there were not previously two downspouts.

The Landlord submitted a letter from an individual who was acting as an agent in the summer of 2013, who declared that he was not informed of a problem with mould until after the Tenants had vacated the rental unit.

The Landlord contends that the Tenants stored an excessive amount of property in the closet of the master bedroom, which may have resulted in mould growing in that location.

The Tenants submitted no expert evidence to establish that the substance observed in the rental unit is mould or that, if it is mould, it is a type of mould that poses a health risk.

The female Tenant stated that the health of both Tenants significantly deteriorated during this tenancy and that it improved after they vacated the rental unit. She stated that they were both in “a fog”, during the tenancy which she describes as a state of confusion. She stated that the male Tenant was diagnosed with COPD during the tenancy and is currently being treated for that condition.

The female Tenant stated that she has not submitted any evidence from a medical practitioner that correlates the Tenants’ health issues with mould.

Analysis:

There is a general legal principle that places the burden of proving that damage or loss occurred on the person who is claiming compensation for damages or loss, which in these circumstances are the Tenants.

Section 32(1) of the *Residential Tenancy Act (Act)* requires landlords to provide and maintain residential property in a state of decoration and repair that complies with health, safety, and housing standards required by law and, having regard to the age, character, and location of the rental unit makes it suitable for occupation by a tenant. I find that the Tenants failed to establish that the mould growing in the rental unit was the result of the Landlord failing to comply with section 32(1) of the *Act*.

In determining that there was insufficient evidence to establish that the mould growing in the rental unit was the result of the Landlord failing to comply with section 32(1) of the *Act* I was influenced, in part, by the absence of any independent evidence that establishes there was a prolonged problem with moisture entering the residential complex. Although the Tenants have speculated that the gutters were leaking into the residential complex for many years, there is no evidence to support that speculation.

The undisputed evidence is that a water leak was reported sometime in 2013 and that the Landlord replaced the gutters. Although the Tenants contend that the new gutters overflowed during heavy rains, there is no evidence that water leaked into the rental unit after the gutters were replaced. I therefore find that the repairs to the gutters were adequate.

I find that the Tenants have submitted insufficient evidence to establish that the leak in the ceiling was reported in January of 2013, rather than June of 2013 as the Landlord contends. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenants’ submission or that refutes the Landlord’s submission. I therefore cannot conclude that the Landlord failed to remediate the leak in a timely manner and I cannot conclude that the leak would have significantly contributed to mould growth.

As the Tenants have failed to establish that the leak in the ceiling was not remediated in a reasonable and timely manner and the Tenants have not established that they

suffered a loss as a result of the leak, I find that the Tenants are not entitled to compensation arising from this leak.

I find that the Tenants submitted insufficient evidence that the residential complex only had two downspouts. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates this submission or that refutes the Landlord's submission that the complex has always had two downspouts. I find the invoice from a gutter company, dated June 19, 2013, is of no evidentiary value, as it does not establish whether the two downspouts installed were "new installations" or whether they simply replaced old downspouts.

In adjudicating this claim I have relied, to some degree, on my extensive experience in adjudicating such claims. It is my understanding that mould can accumulate as a result of condensation even if the building envelope has not been compromised and that it can be controlled by keeping the home warm in cool weather, ensuring areas are properly ventilated, and cleaning mould when it appears.

In determining that there was insufficient evidence to establish that the mould growing in the rental unit was the result of the Landlord failing to comply with section 32(1) of the *Act* I was influenced, in part, by the undisputed evidence that the mould has not reappeared since the mould was remediated at the end of the tenancy. This suggests that the mould may not be directly related to maintenance of the rental property but, rather, to environmental conditions within the rental unit during the tenancy.

In determining that there was insufficient evidence to establish that the mould growing in the rental unit was the result of the Landlord failing to comply with section 32(1) of the *Act* I was influenced, in part, by the undisputed evidence that mould was not found elsewhere in the residential complex, including in the attic or the lower suite which is occupied by the Landlord. This suggests that the mould may not be directly related to maintenance of the rental property but, rather, to environmental conditions within the rental unit during the tenancy.

I find that the Tenants have submitted insufficient evidence to establish that there was mould every metal window frame in the rental unit; on the walls below every window in the rental unit; on the floor in front of every window in the rental unit; and on the north wall of the master bedroom. In reaching this conclusion I was heavily influenced by the absence of evidence, such as photographs, that corroborates the Tenants' submission that there was mould in these locations or that refutes the Landlord's submission that there was not mould in these locations.

On the basis of the undisputed evidence, I find that there was staining on the ceiling of the master bedroom; mould in the closet of the master bedroom; mould in the corner of the kitchen; and mould on at least two window frames and one sliding patio door. I find that the photographs submitted in evidence accurately reflect the mould present in the rental unit at the end of the tenancy.

Unless it can be clearly established that a tenant is responsible for mould growth, I find that section 32(1) of the *Act* requires landlords to take reasonable steps to remove mould and prevent reoccurrence of mould once mould is discovered. In circumstances where mould is accumulating around windows, which is not uncommon with metal windows in wet climates, I find it reasonable for a landlord to simply advise a tenant to periodically wipe windows to prevent mould from accumulating.

The undisputed evidence is that the Landlord told the Tenants they should keep the windows clear of moisture. I therefore find that the Landlord responded appropriately to the report of mould on the windows. Even if the Landlord did tell the Tenants to wipe the windows twice a day, which the Landlord denies, I find that the Tenants should have understood it was not necessary to wipe the windows that frequently. In reaching this conclusion I was heavily influenced by the photograph of the window that was submitted in evidence, which shows the mould growth is relatively minimal.

I find that the Tenants have submitted insufficient evidence to establish that the mould in the bedroom closet wall was reported to the Landlord in January of 2013 or that the mould on the kitchen wall was reported to the Landlord in June of 2013. In reaching this conclusion I was heavily influenced by the absence of evidence that supports this submission or that refutes the Landlord's submission that this mould was not reported until after the tenancy ended. As there is insufficient evidence to establish that the Landlord was aware of mould in these areas prior to the end of the tenancy, there can be no reasonable expectation that the problem could have been remedied prior to the end of the tenancy.

On the basis of the testimony of the female Tenant and in the absence of evidence to the contrary, I accept that the Tenants experienced a variety of health issues during this tenancy, including the male Tenant being diagnosed with COPD.

Section 67 of the *Act* authorizes me to order a landlord to pay compensation to a tenant if the tenant suffers damage or loss as a result of the landlord failing to comply with the *Act*. Even if I concluded that the Landlord failed to comply with section 32(1) of the *Act* by allowing mould to grow in the rental unit (which I have not), I would dismiss the Tenants' claim for compensation because the Tenants have submitted insufficient evidence to establish that the condition of the rental unit contributed to the health issues experienced by the Tenants during the tenancy.

In determining that there is insufficient evidence to establish that the condition of the rental unit impacted the Tenants' health, I was heavily influenced by the absence of any scientific or medical evidence that establishes the mould in the rental unit constituted a health hazard to humans or animals or that it contributed to the health issues the Tenants experienced while living in the rental unit. I note that mould is relatively common in homes and only some types of moulds represent a health hazard.

Anecdotal reports of health deteriorating during the tenancy and then improving after

the tenancy ended has little evidentiary value, as there are many alternate explanations for the noted improvement.

In the absence of evidence to establish that the Landlord failed to comply with section 32(1) of the *Act* and to show that the mould in this rental unit negatively impacted the health of the Tenants, I find that the Tenants are not entitled to compensation arising from the presence of mould.

Conclusion:

The Tenants have failed to establish they are entitled to compensation and I dismiss this Application for Dispute Resolution in its entirety.

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

Dated: January 07, 2016

Residential Tenancy Branch

