Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR MNDC OLC RP

Introduction

This hearing commenced on July 8, 2016 at 9:00 a.m. and continued 52 minutes; at which time the hearing time was about to expire.

During the July 8, 2016 hearing the Landlord was ordered to have a professional inspector, who was licensed in the province of BC, conduct mold inspections and air quality tests of the rental unit as soon as possible. The Landlord was further ordered to submit a written copy of that report to the Residential Tenancy Branch (RTB) through the Service BC office and to the Tenant no later than **August 1, 2016**. The parties were advised the hearing would be reconvened on August 29, 2016 at 10:30 a.m. I reminded both parties they had the opportunity to work towards a resolution of these matters pending the reconvened hearing.

A written Interim Decision was issued July 8, 2016 listing the aforementioned and was emailed to both participants. As such this Decision must be read in conjunction with my July 8, 2016 Interim Decision.

The hearing reconvened on August 29, 2016 at 10:30 a.m. via teleconference. The Landlord and male Tenant were both present at the reconvened hearing. The male Tenant submitted he was representing both Tenants at the reconvened hearing. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Tenant testified he received an email copy of the mold inspection report on July 26, 2016. A copy of that report was received at the RTB on July 28, 2016, as ordered.

Issue(s) to be Decided

1) Should the Landlord be ordered to comply with the *Act* and conduct required repairs for health and safety reasons?
2) Is the Tenant entitled to monetary compensation?
3) Should the 10 Day Notice to end tenancy be upheld or cancelled?

Background and Evidence

The parties entered into a written month to month tenancy agreement which began on January 15, 2016. Rent of $575.00 was payable on the first of each month. The Tenants paid the security deposit of $287.50 on January 15, 2016.

The rental unit was described as a two story 6 unit residential strata complex built on a crawl space and was approximately 30 years of age. The Tenants' rental unit was on the ground floor level.

The Tenant testified he had a brief conversation with the Landlord in April 2016 about required repairs to the rental unit. Then they noticed black mold on the walls in their closet in May 2016. They reported the issue to the Landlord and requested that the Landlord repair the mold problem as soon as possible as the female Tenant was pregnant. The Tenant asserted that the local health nurse advised them that they could not reside in the rental unit if it had mold.

The Tenant testified that no rent had been paid for June 2016 or July 2016 as they are on a limited income and cannot pay rent at two places. He submitted a typed statement that indicated they had to pay $300.00 rent to stay with their friends.

The Landlord posted a 10 Day Notice to end tenancy on the Tenants' door on June 14, 2016. The Tenant stated he received the 10 Day Notice when he attended the rental unit on June 16, 2016.

The Tenant submitted that they have not resided in the rental unit since June 20, 2016. He stated their possessions are still inside the unit and they were staying with friends until the rental unit could be fixed.

The Landlord testified that upon his inspection of the unit in May 2016, he found old black stains inside and underneath in the crawl space. He stated that in 2013 or 2014 there had been repairs to the foundation to repair a small leak into the living room of the rental unit.

The Landlord submitted that at the start of this tenancy in January 2016 he had noticed the corner of the carpet had been wet. He said he advised the Tenants to keep a fan blowing on the area to ensure the carpet dried out thoroughly.

The Landlord asserted that when the Tenants reported the mold he only found stains not mold. He stated at that time he sprayed a second coat of bleach in the crawlspace and on all the black stains in the unit. He argued that it was a well-known fact that you could stop traces of mold with bleach. He stated he had also put a seal around the fountain and wood so no moisture could come into the rental unit. He also had repainted the foundation and sealed the foam.

The Landlord confirmed he was not a licensed technician for the treatment of mold; however, he said he does have experience in dealing with mold problems. He stated he had previous moisture issues; he had painted the exterior of the foundation to deal with that moisture; and the mold existed in the closet before he took over the building.

As indicated above, the Landlord submitted a copy of the July 15, 2016 Inspection Report that had been completed by a licensed inspection. That report confirmed the presence of elevated counts of mold in the following three areas of the rental unit: living room; open area underside of the stairs; and in the northeast bedroom. The Inspection Report suggested six steps that should be undertaken to ensure the mold is properly remediated. It also described how bleach was not a suitable form of treatment for mold.

In addition, the Inspection Report stated, in part, as follows:

> *The presence of mold is viewed on building materials at three separate locations. Living conditions viewed within the interior living space of the unit by the tenant could be a potential contributing factor <u>but enough evidence that the present conditions exhibit past occurrence of water/moisture intrusion to cause mold to develop.</u>*

[Reproduced as written with my underline as emphasis]

The parties were given the opportunity to try and settle these matters through mediation. However, the parties were too far apart and the Landlord requested that the tenancy end in accordance with the 10 Day Notice.

Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Regarding the request for emergency repairs

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this *Act* applies.

Section 32(1) of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the 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.

Section 32(5) of the *Act* provides that a landlord's obligations under subsection 32(1) 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.

Section 33(1)(b) of the *Act* defines emergency repairs to include, in part, repairs that are necessary for the health or safety of anyone or for the preservation or use of residential property.

From his own submissions, the Landlord confirmed the rental unit had had a previous water leakage problem in 2013 or 2014. In addition, the Landlord submitted evidence that the corner of the living room carpet had been wet at the start of this tenancy agreement, which I find is reasonable to conclude that the water leakage problem may not have been fully remediated, pursuant to section 62 of the *Act*.

The professional Inspection Report confirmed elevated levels of mold in three areas of the rental unit with enough evidence that the present conditions exhibited past occurrence of water/moisture intrusion to cause mold to develop.

Based on the totality of the evidence before me, and in consideration that there are 5 other occupied units in this building, I find pursuant to section 62(2) of the *Act,* the Landlord is in breach of section 32 of the *Act;* as there is sufficient evidence to prove the rental unit requires repairs that are necessary for the health or safety and/or for the preservation or use of the residential property. Accordingly, I hereby order, pursuant to section 62(3) of the *Act,* the Landlord to have the required repairs properly completed forthwith.

I caution the Landlord that section 95(3) of the *Act* provides, in part, that a person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine.

Regarding the Request for Monetary Compensation

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

> 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.
>
> 7(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 65(1)(f) of the *Act* provides, in part that without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

Section 67 of the Residential Tenancy *Act* states: Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 32(5) of the *Act* provides that a landlord's obligations under subsection 32(1) 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.

From the Landlord's submissions the Landlord confirmed there had been a previous water leakage problem in the rental unit and that he had knowledge the carpet had been wet at the start of the tenancy. Notwithstanding the fact the Landlord informed the Tenants the carpet was wet; section 32(5) of the *Act* stipulates the Landlord's obligations to repair and maintain the property continued to apply in accordance with section 32(1) of the *Act.*

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 stipulates that it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. That being said a tenant may be entitled to reimbursement for loss of use of a portion of the property or loss of quiet enjoyment even if the landlord has made every effort to minimize disruption to the tenant in making repairs. A substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the

covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

There was irrefutable evidence the Landlord had prior knowledge of a water leakage problem that had previously created the presence of mold. In addition, I find, pursuant to section 62 of the *Act,* it is reasonable to conclude the Landlord knew or ought to have known that the presence of wet carpet prior to the start of this tenancy was an indication the water leakage problem may not have been properly repaired and that mold may regrow in the rental unit, making it unsuitable for occupation.

I accept the Tenant's submissions that they informed the Landlord of the presence of mold. I further accept that when the repairs were not completed in a timely fashion the Tenants were not able to reside in the rental unit with the existing mold. Therefore, I conclude the Tenants suffered a loss of quiet enjoyment of the entire rental unit for the months of June, July and August, in breach of section 28 of the *Act*.

I find the aforementioned loss of quiet enjoyment devalued the tenancy by the full monthly rent of $575.00 for each month the loss occurred, despite the Tenants' possessions remaining in the rental unit, pursuant to section 65 of the *Act*. Accordingly, I grant the Tenants monetary compensation of **$1,725.00** (3 x $575.00), pursuant to sections 65 and 67 of the *Act.*

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce his rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is $1,725.00.

Based on the above, and in consideration of the evidence that the Tenants have not paid the Landlord any amount towards rent or use and occupation for June, July, or August 2016, I order the Tenants' $1,725.00 monetary award be offset against the $1,725.00 rent and use and occupation owed to the Landlord, pursuant to section 65 of the *Act.* Accordingly, rent and amounts for use and occupation of the rental unit for June, July and August 2016 is to be considered paid in full as of the date of this Decision, pursuant to section 62 of the *Act.*

In consideration of the date this Decision is being written, and the fact the Tenants are currently residing in a different town, I further grant the Tenants compensation for loss of quiet enjoyment for the period of September 1, 2016 until 1:00 p.m. on September 15, 2016 in the amount of $287.50. I Order that $287.50 to be offset for payment to the Landlord for use and occupancy of the rental unit until September 15, 2016. The aforementioned orders are issued pursuant to sections 62 and 65 of the *Act.*

<u>In regards to the 10 Day Notice to End Tenancy</u>

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent <u>in full</u> or to make application to dispute the Notice or the tenancy ends.

Under section 26 of the *Act* a tenant is required to pay rent in full in accordance with the terms of the tenancy agreement, whether or not the landlord complies with this *Act*. A tenant is not permitted to withhold rent without the legal right to do so. A legal right may include the landlord's consent for deduction; authorization from an Arbitrator or expenditures incurred to make an "emergency repair", as defined by the *Act.*

In this case the Landlord posted the 10 Day Notice to the Tenants' door on June 14, 2016 which listed an effective date of June 25, 2016. The Tenants received the 10 Day Notice on June 16, 2016; therefore, the effective date of the Notice automatically corrected to **June 26, 2016**.

The Tenants filed an amended application to dispute the 10 Day Notice on June 24, 2016, eight days after they received the Notice; which was not within the required 5 day period. The Tenants did not pay their rent in full within the required five days upon receipt of the 10 Day Notice. In addition, at the time the 10 Day Notice was served upon the Tenants, the Tenants did not possess any of the following: the Landlord's permission to withhold rent or an Order from the Arbitrator to withhold rent. The Tenants had not paid for emergency repairs.

While I accept the Tenants did not withhold the payment of their June 2016 rent with malice, I find the Tenants are in breach of section 26 of the *Act* as they did not pay their rent in accordance with the *Act* or their tenancy agreement. Therefore, I dismiss the Tenant's request to cancel the 10 Day Notice to end tenancy issued June 13, 2016. As such, this tenancy ended **June 26, 2016,** the effective date of the 10 Day Notice.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Upon review of the 10 Day Notice I find the 10 Day Notice issued June 13, 2016 to have been completed in accordance with section 52 of the *Act* and served upon the Tenants in accordance with section 88 of the *Act.* Having dismissed the Tenants' request to cancel the 10 Day Notice above, I hereby grant the Landlord an Order of Possession effective at 1:00 p.m. on **September 15, 2016,** pursuant to section 55(1) of the *Act.*

Any deposits currently held in trust by the Landlord are to be administered in accordance with Section 38 of the *Residential Tenancy Act*.

Conclusion

The Tenants were partially successful with their application and were granted monetary compensation which was offset against the amount of rent owed to the Landlord.

The Tenants' request to cancel the 10 Day Notice was dismissed and the Landlord was granted an Order of Possession effective at 1:00 p.m. on **September 15, 2016**. The Landlord was ordered to conduct repairs to the rental unit forthwith.

This decision is final, legally binding, and 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: August 31, 2016

Residential Tenancy Branch