



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sorrento District & Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

ERP, MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to make emergency repairs, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that sometime in the beginning of September of 2016 she personally served the Landlord with the Application for Dispute Resolution, the Notice of Hearing, and documents the Tenant submitted to the Residential Tenancy Branch on September 01, 2016. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On September 07, 2016 the Tenant submitted 3 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally served to the Landlord on September 08, 2016. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

The parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is there a need to issue an Order requiring the Landlord to replace the toilet in the rental unit?

Is the Tenant entitled to compensation because there is mould growing in her toilet?

Background and Evidence:

The Landlord and the Tenant agree that:

- this tenancy began approximately 3.5 years ago;
- the Tenant pays subsidized rent of \$544.50; and

- the Tenant is still living in the rental unit.

The Tenant stated that:

- she has mould growing in her toilet bowl;
- she based her conclusion that mould is growing in her toilet bowl on research she has conducted over the internet;
- she did not submit any evidence from a professional to establish that the staining in her toilet is mould;
- she is able to partially control the mould by cleaning the toilet;
- she cleans the toilet every three or four days but the mould grows back;
- sometime in the latter part of 2015 she reported her mould concerns to the person in charge of building maintenance;
- in April of 2015 she asked the person in charge of building maintenance for a new toilet, who advised her the toilet would not be replaced; and
- she has been very sick recently, which she believes is due to the presence of mould in the toilet.

In the Tenant's written submission she declared that she reported her mould concerns to the person in charge of building maintenance in February or March of 2016.

The Landlord stated that:

- on September 08, 2016 he inspected the Tenant's toilet bowl;
- when he inspected the toilet bowl he noticed a dark stain;
- he does not believe the stain is mould;
- the Landlord intends to install a new toilet in the rental unit;
- he was not personally informed that the Tenant was concerned about mould in her toilet until he was served with this Application for Dispute Resolution;
- the person in charge of maintenance had previously told him the Tenant wanted him to clean her toilet and that he did not comply with that request;
- he did not see the text message from the Tenant, dated July 30, 2016, until he received evidence for these proceedings;
- the Tenant should have contacted the Board if she was not satisfied with the response provided to her by the person in charge of maintenance;
- the Landlord hired a new person to be in charge of maintenance, effective September 16, 2016;
- the water in the residential complex was tested after the Landlord received notice of the Tenant's concern with mould, and no water problems were detected; and
- no other tenants have reported a problem with mould in their toilet bowls.

The Tenant submitted a letter from a medical practitioner outlining some of the Tenant's medical symptoms, in which he declares "might be related to mold exposure in her living area".

The Tenant submitted medical alert information that outlined some of her medical conditions.

The Tenant submitted a series of text message she exchanged with the person in charge of maintenance, dated July 30, 2016, in which she refers to the mould in the toilet.

The Tenant submitted 5 photocopied photographs, which she stated are images of inside the toilet bowl. I note that the images are of poor quality.

The Tenant is seeking an Order requiring the Landlord to replace her toilet. She is also seeking compensation, in the amount of \$10,000.00, for the inconvenience of having to clean the toilet frequently and because she believes the mould has negatively impacted her health.

Analysis:

Section 32(1) of the *Residential Tenancy Act* (*Act*) stipulates that a landlord must 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. There is a general legal principle that places the burden of proving a fact on the applicant who is relying on that fact. In circumstances such as these, where the Tenant alleges that the Landlord has not has not complied with section 32(1) of the *Act*, the burden of proof rests with the Tenant.

I find that the Tenant has submitted insufficient evidence that the Landlord failed to comply with section 32(1) of the *Act* when the Landlord failed to address her concerns with the stains in her toilet bowl. In reaching this conclusion I was influenced by:

- the absence of evidence from a qualified professional that establishes mould is growing in her toilet bowl;
- the fact the Tenant did not submit any independent documentary evidence that supports her conclusion that mould can grow in a toilet bowl;
- the testimony of the Landlord, who acknowledges that there is staining but does not believe the staining is caused by mould;
- my inability to clearly see the stains/mould in the toilet, due to the poor quality of the photographs submitted in evidence by the Tenant;
- the absence of any evidence that shows the staining in the toilet bowl, which can be controlled with frequent cleaning, breaches any health, safety, and housing standards; and
- the undisputed evidence that the Landlord has had the water to the residential complex tested and was unable to detect a problem with the water source.

As the Tenant has failed to establish that the Landlord has failed to comply with section 32(1) of the *Act* when the Landlord failed to address her concerns with the stains in her

toilet bowl, I dismiss her application for an Order requiring the Landlord to replace or repair her toilet. In adjudicating this matter I was influenced, to some degree, by the possibility that the staining in the toilet bowl may be the result of the Tenant introducing something into the toilet bowl that is causing the staining/mould.

I note that the Landlord promised to replace the Tenant's toilet during this hearing. In the event the Landlord does not comply with this promise the Tenant has the right to file an Application for Dispute Resolution seeking an Order requiring the Landlord to comply with this promise.

As the Tenant has failed to establish that the Landlord is obligated to replace her toilet as the result of mould/staining or that the frequent need to frequently clean the toilet is related to a problem with the toilet, I find that she is not entitled to compensation for the inconvenience of having to clean her toilet.

I find that the Tenant has submitted insufficient evidence to show that her medical conditions are related to the staining/mould in the toilet and I therefore dismiss her claim for compensation for health related issues. This decision is based, in part, on the fact that the presence of mould has not been established and, in part, on the fact there is no evidence that a medical practitioner has definitively related her medical symptoms to the presence of mould.

I find that the Tenant has failed to establish the merit of her Application for Dispute Resolution and I dismiss her application to recover the fee paid to file this Application.

Conclusion:

The Tenant's Application for Dispute Resolution is dismissed 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: October 05, 2016

Residential Tenancy Branch