



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, LRE, OLC, PSF, RP, RR, FFT

Introduction

The tenant applied for this dispute resolution hearing on July 21, 2020. They are seeking orders for the following:

- an order that the landlord comply with the *Residential Tenancy Act*, the regulations and/or the tenancy agreement;
- compensation for monetary loss or other money owed;
- compensation for the cost of emergency repairs that they made during the tenancy;
- an order to reduce rent for repairs, services or facilities agreed upon but not provided;
- an order that the landlord provide services or facilities required by the tenancy agreement or law;
- an order setting conditions on the landlord's right to enter the rental unit;
- an order that the landlord make repairs to the unit;
- compensation for the cost of the application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the "Act") on August 27, 2020.

Both parties attended the hearing, and the landlord confirmed they received the evidence prepared by the tenant. The tenant also stated they received the evidence prepared in advance by the landlord. Both parties stated that the provided evidence to the other with the transaction made in the presence of a witness. On this basis, I proceeded with the hearing.

Preliminary Matters

At the outset of the hearing, the tenant stated the only immediate issue for them was “the black mould.” They presented how the issue is affecting the health of their children. They have moved offsite to a separate housing location for this reason.

They acknowledged they had completed the Application for Dispute Resolution listing many issues. Some of these issues involved monetary claims: that for work they had completed individually in the past; and that for personal items and furniture that need replacement because of the overarching issue with mould.

They also applied for an order limiting the landlord’s right to enter the rental unit. This is based on conflicts both between the parties in this hearing and others involved with the maintenance of the unit in the past.

The tenant agreed that these issues are outside the scope of this hearing. They reiterated that their focus is on the immediate problem of having a place to stay that is not affected by mould which causes immediate health concerns.

By Rule 2.3 of the Residential Tenancy Branch Rules of Procedure, I dismiss these other claims involving monetary issues and the tenant’s request for an order that limits the landlord’s right to enter. I find these are unrelated to the immediate issue of the tenant’s health concern. The tenant has leave to reapply on these separate issues in a separate hearing process.

Issue(s) to be Decided

Is the tenant entitled to an order for repairs to the rental unit pursuant to section 32 of the *Act*?

Is the tenant entitled to an order for the landlord to comply with the *Act*, regulations, and/or the tenancy agreement?

Is the tenant entitled to recover the filing fee for this Application pursuant to section 72 of the *Act*?

Background and Evidence

Both parties agreed on the terms of the tenancy agreement in place. The landlord provided a copy of this agreement for the hearing. The tenancy started on April 1, 2020 with the tenant paying \$1,000.00 per month, payable on the 1st of each month.

The tenant spoke to the main issue at hand, that of “black mould”. They moved to another location and “this is the main reason [they are] in another place . . .for about a month now.”

There was an immediate concern with water damage when the tenant moved in. The landlord made repairs immediately at that time; however, ill effects began to show on the tenant’s two children. The tenant submitted that discussions with the landlord started in May 2020.

The landlord provided a volume of documentary evidence for this hearing. They stated this shows “there has been a lot of communication and the issue is being fixed” and this communication commenced in June. Emergency measures in place in the province have made securing work from a contractor difficult. This includes the handyman regularly employed by the landlord. The landlord submits that their efforts to repair are hampered by the tension between the tenant and other known parties.

The tenant spoke of their desire to return to the unit, which they find to be ideal for their purposes and suitable to their family’s size and age. When prompted for input on what they feel is an adequate solution to the problem, they stated that they would need to have a series of pictures in place, showing the condition of the unit before they would be able to return. This is to alleviate their concerns about others blaming them for more damage to the unit.

The landlord provided that the cabinets damaged by water will be replaced in short order. They have already obtained cabinets at significant cost and they are only awaiting plans for a scheduled visit by a handyman in place in order to finish the work.

In the hearing, two additional issues were raised: that of moisture accumulating in the bathroom ceiling that is causing another mould issue; and a leak in the basement which only very recently came to the landlord’s attention.

Settlement Agreement

The parties reached a full agreement in the hearing about the immediate issue of mould in the kitchen area. They reached agreement on a plan of action with consideration of both their needs and obligations in this matter.

This is:

1. The unit will be free of other parties for one afternoon, mutually arranged.
2. The tenant fully has the opportunity at that time to take pictures of the unit – in order to thoroughly document the condition of the unit. They want to accomplish this to proactively address any questions concerning the need for repairs in the future.
3. The tenant has the ability to stay in another location for the following month of September. This affords the landlord the opportunity to complete the work of replacing the cabinets.
4. The landlord pledges to complete this work with the tenant not present in the unit. This is due to conflict with the handyman and the tenant and based on past interactions.
5. The landlord agreed to have a handyman complete the work in September. This is based on handyman availability; however, the landlord stated that the work is easier accomplished when the tenant is not present.

Additionally, the tenant agreed to coming up with a simple plan to have ventilation active in the bathroom. Both parties agreed that this is a next-step item that needs to be addressed for the important measure of having adequate ventilation in the bathroom. A family member of the tenant is ready to have a preliminary look at the issue and advise. I urge the parties to reach an agreement on an implemented solution.

Additionally, the matter of a leak in the basement requires close and focused communication on the issue at hand between the parties.

I urge the parties to also come to an agreement on the undertaking of any future repairs needed to the unit. It is necessary to keep requests for repairs, options for repair or replacement, and a precise record of which party – either the landlord or the tenant – will undertake the repairs. Also, options should be outlined with approximate costs, timeframes, and other parties involved. This should facilitate the parties having discussion on options and reaching an agreement on a solution. This information must be documented and signed by both parties. Email and text messages are not ensuring adequate agreement on the terms of repairs, and ultimately this negatively impacts the tenancy agreement in place between the parties. Additionally, communication via third parties is also having a negative impact on the important landlord-tenant relationship.

I trust the parties can work on this important step in achieving harmony on repairs needed for the unit going forward.

Finally, the tenant agreed to pay the full amount of rent for the upcoming month of September 2020. This fulfills their obligation under tenancy agreement for the provision of rent on the 1st of each month.

Both parties confirmed this agreement is made on a voluntary basis and with the understanding of the nature of this full and final settlement on this matter of immediate repairs. I accept and record the settlement agreement reached by the parties during the hearing.

The parties reached this settlement agreement in accordance with section 63 of the *Act*. The parties are bound by the terms of this agreement, as well as the tenancy agreement and the *Act*. Should either party violate the terms of this settled agreement, the tenancy agreement, or the *Act*, it is open to the other party to take steps under the *Act* to seek remedy.

I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

The parties reached a full and final settlement agreement in resolution of the immediate need for unit repairs. I have recorded the terms of settlement in this decision.

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: August 31, 2020

Residential Tenancy Branch