Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP RR FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act.*

AH appeared for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

As the parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution ('application'), evidence, and amendment. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application, evidence, and amendment.

The tenant testified that they did not receive any evidence from the landlord. The landlord confirmed that they did not serve the tenant with their evidentiary materials. The tenant confirmed that they did have a copy of the March 16, 2022 letter that was submitted in the landlord's evidence, and was okay with the admittance of this letter. As the tenant was not properly served with the landlord's evidentiary materials, the

landlord's evidence will be excluded for the purpose of this hearing, with the exception of the March 16, 2022 letter which the tenant took no issue with admitting.

At the outset of the hearing, the landlord confirmed that the home was sold, and that they were no longer the owner of the property. Accordingly, any further testing requested by the tenant would be responsibility of the new landlord. The tenant confirmed that they just wanted to proceed with the monetary aspects of their application. On this basis, I dismiss the tenant's request for repairs or further testing without leave to reapply.

Issues

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This tenancy originally began as a fixed-term tenancy on September 1, 2019, and continued on a month-to-month basis after August 31, 2020. Monthly rent is currently set at $1,900.00, payable on the first of the month. The landlord had collected a security and pet damage deposit of $950.00 each deposit.

The tenant filed this application on January 26, 2022 as mould was discovered in the rental unit in January 2022. Since that application was filed, the tenant subsequently filed an amendment for a rent reduction in the amount of $1,900.00 for each of the months of January, February, and March 2022 for a total rent reduction of $5,700.00.

The tenant states that the landlord failed to fulfill their obligations by performing a proper investigation and remediation of the rental unit, and instead sold the rental unit. The tenant testified that the water damage was present when the tenant first moved in, and the landlord therefore failed to provide and maintain the residential property in a reasonable state of decoration and repair suitable for occupation. The tenant feels that they did were not living in a safe environment due to presence of mould. The tenant feels that the landlord had considered the matter "closed and dealt with", which the tenant disagreed with.

The tenant testified that the technician who attended the rental unit had informed the tenant that the landlord had given them very strict and specific instructions to simply clean the small 2x2 panel with mould, and not perform any further remediation or abatement. The tenant also states that the technician had informed them that this method was simply "putting a band-aid on an open wound". The tenant states that the technician had informed the tenant that "it was likely a much bigger issue based on the length of time since various repairs" and that the mould was "likely throughout the walls".

The landlord disputes the tenant's claims that the mould was not properly dealt with, and that the proper parties were contacted such as the builder, the landlord's insurance company, and the environmental company. The landlord testified that it was not necessary nor practical to open up all the walls in the rental unit. The landlord testified that they had contacted the builder on January 12, 2022, immediately after the tenant had reported issues with the heating in the rental unit, and that an agent from the builder was sent to investigate. The landlord testified that the agent confirmed that the walls were dry and warm, and offered to spray the area of bleach. The landlord testified that they had also contacted their insurance company, who also sent someone to investigate, and also confirmed the area was dry, and that there are no active leaks in the rental unit. The agent recommended that the mould be cleaned and sanitized.

The landlord also arranged a visit from an environmental company to treat the area, after which the company had provided confirmation by way of a letter dated March 16, 2022 that the issue was dealt with.

The letter, which was submitted in evidence, states:

"We are pleased to confirm we completed the Level-1 Mould Decontamination and Encapsulation of mould impacted Plywood and Drywall within the bedroom closet at the above location on March 10, 2022…

All work was performed in accordance with WorkSafeBC, Canadian Construction Association, and Ministry of Environment guidelines governing the safe remediation of mould impacted materials.

All mould containing or mould contaminated waste was packaged and transported in accordance with the appropriate requirements and disposed of at an approved facility.

Note. Future damage or moisture ingress may create regrowth of the mould and this letter is not a guarantee that no other mould impacted materials may be present in other locations within the home as not all wall cavities were inspected during our time on site".

Analysis

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the Act, which states;

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.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

Section 65(1)(c) and (f) of the *Act* allows me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement."

In this matter the tenant bears the burden to prove that it is likely, on balance of probabilities, that facilities listed in the tenant's application were to be provided as part of the payable rent from which its value is to be reduced. I have reviewed and considered all relevant evidence presented by the parties. On preponderance of all evidence and balance of probabilities I find as follows.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

> ***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.*

I have considered the testimony and evidence of both parties. while I am satisfied that mould was present in the rental unit, I must still assess whether the landlord's actions resulted in a reduction in the value of the rental unit for the tenant, and if so, whether the amount the tenant requested is justified.

Although the landlord does not dispute that there was mould and water damage present in the rental unit, the landlord feels that they had properly addressed the issue to the extent required under the *Act a*nd tenancy agreement.

In light of the disputed claims brought forth by the tenant, I note that the burden falls on the tenant to support their claims. In this case, although I am extremely sympathetic about the stress and anxiety experienced by the tenant, I am not convinced that the mould in the rental unit, and more specifically the landlord's response to the presence or possibility of mould, resulted in the loss or suffering claimed by the tenant. Although I understand the tenant's concern about their health and safety, I do not find that the tenant had provided sufficient evidence to support that that the tenant's health was impacted during this tenancy by the presence of mould in the rental unit. Furthermore, although the tenant referenced conversations between the tenant and the attending

technician, these conversations were recounted by only the tenant. The tenant did not submit any written reports nor documentation of these conversations, nor did the tenant provide sworn testimony or statements by the technician. Furthermore, no witnesses were present to confirm that these conversations took place, nor was the technician called as a witness to testify or be subject to cross examination by the landlord. As the technician's statements were provided by the tenant, and not directly by the technician themselves, I can only consider the recounted statements as hearsay evidence, which cannot be relied upon for credibility or accuracy.

Although the belief of the tenant was that the issues were not properly addressed by the landlord, I find that the landlord had provided a detailed account of how they had taken timely action to contact multiple parties to investigate and address the problem, including the builder, their insurance company, and an environmental company, the latter of which provided a written letter confirming that they had performed "*Level-1 Mould Decontamination and Encapsulation of mould impacted Plywood and Drywall within the bedroom closet"* and that this work met the requirements of the guidelines and standards required for this type of work.

Although the tenant believes that the mould was present prior to the tenant moving in, I do not find this belief to be supported in evidence. Furthermore, even if there was existing mould, the tenant has failed to establish that the presence of mould had posed a threat to the tenant's health or well-being.

I do note that the letter does provide a disclaimer about how there may be future mould regrowth caused by future damage and moisture ingress, and how that the letter cannot be considered a guarantee that there are no other mould impacted materials present in the home. I do not consider this disclaimer to invalidate the work performed by the technician, nor does the disclaimer confirm or verify the tenant's belief that the work was inadequate to treat the presence of mould in the rental unit. I find that the disclaimer merely echoes the landlord's sentiments that it would be unreasonable and unnecessary to open up every wall in the rental unit in order to search for, and treat potential mould growth, and that future mould growth is always possible and not necessarily due to the landlord's or technician's failure to properly address the matter.

I find that the evidence and testimony support that the landlord took the proper steps to address the mould as required by section 32 of the *Act,* with consideration for the health and safety standards as demonstrated by fact that the landlord had contacted multiple parties to inspect the mould, and final written confirmation by an environmental company that specifically deals with this type of contamination. On the other hand, I am

not satisfied that the tenant has met the burden of proof to establish that the landlord failed to take the proper steps to ensure the tenant's health and safety, and that this failure resulted in the losses claimed by the tenant.

I am not satisfied that the landlord has failed in their obligations nor am I satisfied that there has been a contravention of the *Act* or tenancy agreement. Accordingly, I dismiss the tenant's application for the rent reductions requested without leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the tenant was unsuccessful with their application, I find that the tenant is not entitled to recover the $100.00 filing fee paid for this application. The tenant must bear the cost of this filing fee.

Conclusion

I dismiss the tenant's application for a rent reduction and for recovery of the filing fee without leave to reapply.

The remainder of the tenant's application is dismissed with leave to reapply.

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: July 18, 2022

Residential Tenancy Branch