Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenants applied for:

- an order requiring the landlord to carry out repairs, pursuant to section 32;
- an order to reduce the rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for the cost of emergency repairs, pursuant to sections 33 and 67; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants RW (the tenant) and KW and the respondent, represented by property manager RR and counsel RH (the landlord), attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to $5,000.00 if they record this hearing: “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 of not more than $5,000.00.”

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

Preliminary Issue – Order for Repairs

At the outset of the hearing the tenant affirmed she no longer needs an order for repairs, as the landlord completed the repairs on December 09, 2022.

The application for an order for repairs is moot.

Section 62(4)(b) of the Act states an application should be dismissed if the application or part of an application for dispute resolution does not disclose a dispute that may be determined under the Act. I exercise my authority under section 62(4)(b) of the Act to dismiss the application for an order for repairs.

Issues to be Decided

Are the tenants entitled to:

- an order to reduce the rent for repairs?
- a monetary order for the cost of emergency repairs?
- an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenants' obligation to present the evidence to substantiate the application.

Both parties agreed the ongoing tenancy started on June 01, 2021. Monthly rent is $2,373.07, due on the first day of the month. At the outset of the tenancy a pet damage deposit of $1,169.00 was collected and the landlord holds it in trust. The tenancy agreement was submitted into evidence.

The tenants are seeking a retroactive rent reduction in the monthly amount of $1,186.54 (50% of rent) from July 1 to October 31 and $2,373.07 (100% of rent) from November 01 to 31, 2022 and a monetary order for the cost of a mould report in the amount of $708.75.

The tenants' application states:

> We are requesting a reduction in rent for the months of July, August, September, October and November for incomplete repairs to remove/treat mold in our second bedroom. For the months of October and November, the bedroom has not been occupied due to our growing concerns regarding the health hazards related to exposure to mold. Our son has had chronic respiratory symptoms since July that are unrelated to an acute infection, so he has been sleeping in a small crib in the primary bedroom.

Both parties agreed the 1,000 square feet, 2 bedroom rental unit was completed in May 2021 and the tenants are the first occupants.

The tenant stated she noticed mould in the bedroom occupied by her infant son (the bedroom). The tenant cleaned the mould and immediately notified the landlord on June 27, 2022. On June 28, 2022 a plumber attended the rental unit, inspected a pipe and a baseboard in the bedroom and started repairing a leaky pipe. The plumber returned on July 05, 2022 and completed the pipe repair.

The landlord emailed the tenant on June 29, 2022: "After discussing with the plumber what he found yesterday, it was an expansion joint break/leak that will need replacement. They said not to worry, it wasn't mold around those edges it was oily water that came down through the pipes."

The landlord testified the plumber informed him that there was no mould in the drywall removed to repair the pipe, there was mould in the baseboard and the plumber treated it. The drywall was reinstalled on July 20, 2022. The landlord was aware that the repairs were in the bedroom occupied by the tenants' infant son.

The tenant said she verbally asked the landlord on July 18 or 20, 2022 to address the mould in the bedroom. The landlord affirmed the tenant did not inquire her in July 2022 about mould.

Later the tenant stated she was not aware that there was mould in the bedroom after the plumber visits in July 2022 and that the landlord informed her on July 20, 2022 that there was no mould in the rental unit.

The tenant testified that her brother died in July 2022 and the tenants were not able to focus on the mould issue until September 2022.

The tenants noticed their infant son started having health issues related to mould in July 2022. The tenants travelled for five days in September 2022 and noticed their son's health improved. The tenants contacted their healthcare provider in October 2022 and the healthcare provider informed them their son's health issues could be related to mould. The tenants decided to further investigate the mould incident.

On October 13, 2022 the tenant emailed the landlord:

> Tenant: **Please review the images that were sent to you via email regarding the discovery of the leak in our son's bedroom closet in late June. As you can see from the photos, there is significant mold on the baseboard and the carpet.** If this mold was not present, it would not have been apparent that there was a leak, as there was no other physical evidence of water damage. **I understand that the plumber did state to you that they did not note any mold, however the baseboard had already been cleaned up by me with a bleach solution prior to him arriving to investigate where the leak was. The drywall that was removed to repair the leak was very wet (it resembled soggy cardboard),** so we were surprised that [redacted] used the same piece of drywall when he was doing his repairs. It is a known fact that any wet/damp material will offer a breeding ground for mold within a short period of time. I did express my concerns with regards to mold to you in July, however based on the accounts of the plumber, you did not share my concerns.
> **As my husband has mentioned to you in your phone conversation earlier today, my son has had a chronic respiratory infection since July**, and the only time that it seemed to completely resolve was while we were away in Whistler for 5 days. Within a few days upon returning home, the symptoms returned. This has left us with a suspicion that he is being exposed to something within his home environment and based on the circumstances, we assume it may be mold. It has been recommended to us to investigate this possibility.
>
> (emphasis added)

Both parties agreed the mould inspector could attend the rental unit on October 14, but the tenants asked the inspector to attend the rental unit on October 19, 2022 so they could be at the rental unit during the inspection.

The tenant said the mould inspector visited the rental unit on October 19 and 25, 2022, removed the baseboard because it was contaminated with mould and applied a spray treatment for mould. The tenant affirmed the inspection lasted ten minutes.

The landlord confirmed receipt of the inspection report on October 27, 2022 (the October report) with 5 pages and 15 photographs. It states:

> Claim summary: Please perform mold test, take photos and videos, check for surface mold, take air readings and add to Hydro in Encircle, and take moisture readings of walls in order to create report.
> Please do not discuss findings with tenant.
> Mold inspection October 19: Previous leak that had since been repaired, tenant claimed mould in the closet that has been causing her child to be sick. Moisture readings detected no moisture in the drywall. Mold test came back positive on the baseboard below leak. Air reading came back as normal. Recommended to building maintenance that the baseboard be removed and possibly disposed of and drywall be assessed and cleaned.
> […]
> Remaining mold behind baseboard: Baseboard was removed and discarded. Mold remining on wall and floor was treated, scrubbed and treated again. Baseboards needs to be replaced.

The October report contains a photograph of a moisture reading of 55.2% on October 19, 2022 in the “baby room”.

The landlord stated there was a small amount of mould in the baseboard and the inspector treated it.

On October 28, 2022 the tenant asked the landlord to provide a complete copy of the October report. The tenant confirmed receipt of the landlord’s email dated October 31, 2022:

> Our testing and remediation company has now completed their work in your unit. We asked the contractors to test for moisture content in the drywall and trim, as well as test for airborne mold particles in the bedroom and closet.
> The initial readings for moisture in all cases came back as zero.

> There was no mold present on the drywall. There was mold present on the baseboard below the original water leak which is consistent and to be expected where water was present for a period of time. We removed the baseboard and cleaned the area behind the baseboard in case any mold existed there. Our contractor returned and retested the area and found no mold present.
> The air quality testing showed a normal result on each visit.
> The baseboard now needs to be replaced and we are ready to carry out this work.
> Once this is complete, we can close our file as there has never been any airborne mold beyond normal levels and surface mold was restricted to a small area of baseboard which has now been remediated.
> We trust this work has been carried out to your satisfaction.

The landlord forwarded a complete copy of the October report to the tenants on November 8, 2022. The landlord did not send the October report earlier because he considered it was not relevant for the tenants and that the report is an internal document.

The tenant testified that a moisture reading above 17% indicates there is mould. The tenant decided to hire a mould inspection company for a detailed inspection because of the landlord's lack of transparency. A new report was issued on November 23, 2022 with 20 pages (the November report). It states:

> Description of Analysis: Analytical Laboratory EMSL Canada Inc. (EMSL Canada) is a nationwide, full service, analytical testing laboratory network providing Asbestos, Mold, Indoor Air Quality, Microbiological, Environmental, Chemical, Forensic, Materials, Industrial Hygiene and Mechanical Testing services. Ranked as the premier independently owned environmental testing laboratory in the nation, EMSL Canada puts analytical quality as its top priority. This is assured by our high quality personnel, including experienced microbiologists with graduate degrees. Our quality system is based on internationally accepted criteria for competence (ISO/IEC 17025). EMSL Canada is an independent laboratory that performed the analysis of these samples . EMSL Canada did not conduct the sampling or site investigation for this report. The samples referenced herein were analyzed under strict quality control procedures using state-of-the-art microbiological methods. The analytical methods used and the data presented are scientifically and legally defensible The laboratory data is provided in compliance with the ISO 17025 standard for the particular test(s) requested, including any associated limitations for the methods employed. These data are intended for use by professionals having knowledge of the testing methods necessary to interpret them accurately.

The November report lists six kinds of fungal spores found in the rental unit. In the bedroom the inspection found: “17200 m3, 97.4% of Aspergillus and Penicillium”. The laboraty analysis is signed by a manager.

The landlord confirmed receipt of the November report on November 24, 2022 and immediately started repairing the mould. The landlord completed the mould treatment on December 09, 2022.

On November 25, 2022 the landlord offered the tenants to relocate to another rental unit:

> The weather is changing and next week you are going to be looking for heat, so we need to think about how to handle this scenario. We have options which I will summarize here and if you have other ideas you can let me know;
> 1. Space heaters. We can leave a few with you to keep warm.
> 2. You could temporarily re-locate within the building
> 3. You could permanently re-locate within the building
> 4. You could leave the building entirely with no lease penalties or notice requirements
> 5. You could temporarily stay with relatives or friends

The tenant said they decided not to move in the weeks before Christmas to other units because they were afraid that other rental units in the same building had the same mould issues.

The tenant affirmed the mould was likely caused by the leaky pipe. The tenants moved their infant son to their bedroom in September 2022 and believe their son may have further health issues because of the exposure to mould. Tenant KW stated that he also suffered nasal congestion because of the mould.

The landlord testified the tenants did not mitigate their losses. The landlord said she hired professionals to address the mould and was diligent during the entire process.

The landlord submitted two Residential Tenancy Branch decisions as part of her evidence.

The tenants are seeking a monetary order in the amount of $708.75 for the November 23, 2022 mould inspection, as they paid this amount to the mould inspector. The landlord agreed to pay this amount.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove the case is on the person making the claim.

Section 65(1) of the Act states:

> (1)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 agreemen**t, the director may make any of the following orders:
> […]
> (b)**that a tenant must deduct an amount from rent to be expended on** maintenance or a repair, or on a service or facility, as ordered by the director;
> […]
> (f) **that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement**;
>
> (emphasis added)

Residential Tenancy Branch (RTB) Policy Guideline 22 states an arbitrator may order that past or future rent be reduced :

> Where it is found there has been a substantial reduction of a service or facility, without an equivalent reduction in rent, an arbitrator may make an order that past or future rent be reduced to compensate the tenant.

Section 65 of the Act should be read in conjunction with sections 7 and 67:

> 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.
>
> Director's orders: compensation for damage or loss
> 67 Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], 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.

RTB Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenants claim they suffered a reduction in their tenancy in the amount of 50% of rent from July 01 to October 31 and 100% of rent from November 01 to 31, 2022 because of a mould infestation in the rental unit.

Section 32 of the Act states:

> (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.
>
> (2)A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

RTB Policy Guideline 01 states:

> The Landlord is responsible for ensuring that rental units and property, or manufactured home sites and parks, meet “health, safety and housing standards” established by law, and are reasonably suitable for occupation given the nature and location of the property. The tenant must maintain "reasonable health, cleanliness and sanitary standards" throughout the rental unit or site, and property or park.

I accept the uncontested testimony that the tenant noticed mould in the rental unit's bedroom occupied by her infant son on June 27, the tenant notified the landlord on the same day and on June 28, 2022 a plumber inspected the bedroom.

I find the tenant's testimony about notifying the landlord on July 18 or 20, 2022 about remaining mould in the bedroom vague and non-convincing. I find the tenant failed to prove, on a balance of probabilities, that she notified the landlord in July 2022 about the remaining mould in the bedroom.

Based on the email dated June 29, 2022 and the landlord's convincing testimony, I find the landlord informed the tenants on June 29 and July 20, 2022 that there was no mould remaining in the rental unit.

Based on the October 13, 2022 email, I find the tenants notified the landlord about a remaining mould infestation in the bedroom on October 13, 2022.

I accepted the uncontested testimony that the landlord asked for a mould inspector to attend the rental unit on October 14, but the inspection only happened on October 19, 2022 because the tenants requested to have the inspection on that date.

I find the tenants failed to prove, on a balance of probabilities, that the landlord failed to comply with the Act from June to October 19, 2022, as the tenants did not notify the landlord about the remaining mould infestation until October 13, 2022 and requested to have the inspection on October 19, 2022. The landlord could not have taken actions to address mould during this timeframe, as the tenants did not notify the landlord about the remaining mould infestation in the bedroom.

I accept the tenant's uncontested testimony that the October 19, 2022 inspection lasted ten minutes.

The October report does not have information about the inspector responsible for the inspection and it does not contain a laboratory analysis. The November report, signed by a laboraty analysis manager, contains a detailed laboraty analysis of fungal spores and a description of the analysis. I find the October report, based on a ten-minute inspection, was superficial and did not thoroughly analyze the rental unit and the November report is a detailed analysis of mould in the rental unit.

I accept that the landlord instructed the inspector responsible for the October report to not discuss the findings with the tenant, the landlord did not provide a copy of the October report to the tenants after their written request on October 28, 2022 and the landlord only provide a copy of the October report on November 08, 2022.

The landlord did not object to the conclusion of the November report and immediately took action to address the mould infestation referenced in the November inspection. Furthermore, the landlord offered the tenants to move to another unit on November 25, 2022, one day after he received the November report.

Based on the October 13, 2022 email and the landlord's testimony, I find the landlord was aware since October 13, 2022 that the remaining mould infestation was in a bedroom occupied by an infant and that the tenants' claim that since July 2022 the infant had a chronic respiratory infection.

Landlords are not held to a perfection standard. However, in the current case, as the landlord was aware that the initial mould found in June and July 2022 was in the infant's bedroom, on October 13, 2022 the landlord was aware that the remaining mould infestation was in the same bedroom, I find the landlord should have taken additional steps to thoroughly inspect the bedroom for mould, such as hiring a laboraty mould analysis similar to the one hired by the tenants.

As such, I find the landlord failed to comply with section 32 of the Act by hiring a superficial mould investigation of the rental unit in October 2022.

I find the landlord was in breach of section 32 of the Act from October 20, one day after the day the October inspection happened, to November 23, 2022, the day before the landlord received the November report and started repairing the mould (the affected period).

I find the tenants mitigated their losses during the affected period, as they requested a copy of the October report, hired their mould analysis and submitted this application on November 06, 2022.

The tenants occupied the rental unit during the affected period but moved their infant son to their bedroom because of the mould. The nature of the issue was not so severe that the entire rental unit was uninhabitable. The tenant's testimony about their infant son having further health issues was vague.

I find the tenants failed to prove, on a balance of probabilities, that they suffered a reduction in their tenancy in the amount claimed. Considering the circumstances, I find that an appropriate loss in the value of the tenancy resulting from the landlord's breach of section 32 of the Act is 40% of the rent during the affected period.

Pursuant to section 64(2) of the Act, I am not bound by previous RTB decisions. However, I have considered both parties' submissions and copies of two previous RTB decisions submitted into evidence by the landlord.

Decision 72022, dated July 18, 2022, found that "I am not convinced that the mould in the rental unit, and more specifically the landlord's response to the present or possibility of mould, resulted in the loss or suffered claimed by the tenant" and decision 52022, dated May 30, 2022, found that "Although the tenant feels that the landlord had acted in a deceptive manner, I do not find that the evidence support this."

In this matter, considering the evidence submitted, I found that the tenants suffered a loss because the landlord breached section 32 of the Act by hiring a superficial mould investigation of the rental unit in October 2022.

I accept the uncontested testimony that monthly rent is $2,373.07. Thus, daily rent is $79.10, the total amount of rent for the affected period is $2,768.50 and the loss is $1,107.40 (40% of $2,768.50).

In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in the tenants' favour in the amount of $1,107.40.

Based on both parties' uncontested testimony, I award the tenants a monetary compensation in the amount of $708.75 as compensation for the payment of the November inspection.

The tenants are partially successful in their application. Thus, I award the tenants the return of the $100.00 filing fee.

In summary, the tenants are entitled to:

Item	Amount $
Rent reduction	1,107.40
Inspection	708.75
Filing fee	100.00
Total	**1,916.15**

As explained in section D.2 of Policy Guideline #17, section 72(2)(b) of the Act provides that where an arbitrator orders a party to pay any monetary amount or to bear all or any part of the cost of the application fee, the monetary amount or cost awarded to a tenant may be deducted from any rent due.

Conclusion

Pursuant to sections 7, 32, 65, 67 and 72(2)(a) of the Act, I authorize the tenants to deduct the amount of $1,916.15 from their next rent payment.

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 12, 2023

Residential Tenancy Branch