



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, OLC, RP, PSF, RR, FF

Introduction

This hearing dealt with the tenant's application for compensation for damage or loss under the Act, regulation, or tenancy agreement; orders for the landlord to comply with the Act, regulations or tenancy agreement, make repairs to the rental unit or property, and provide services or facilities required by law; allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and, recover the filing fee from the landlord. The tenant provided adequate evidence that the tenant's evidence package was served upon the landlord in accordance with the Rules of Procedure. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the other parties' submissions.

At the commencement of the hearing, both parties consented to amend the landlord's name to the landlord's current legal name. This decision reflects the amendment.

Issues(s) to be Decided

1. Whether the tenant has established an entitlement to compensation for damage or loss under the Act, regulations or tenancy agreement, and if so, the amount?
2. Whether an order for the landlord to comply with the Act, regulations or tenancy agreement is warranted.
3. Whether a repair order is warranted.
4. Whether an order for the landlord to provide services or facilities is warranted.
5. Whether the tenant is authorized to reduce rent for repairs.
6. Award of the filing fee.

Background and Evidence

Upon hearing undisputed testimony and evidence of the parties, I make the following findings. The tenancy commenced in December 2000. The tenancy agreement provides that the tenant must pay \$695.00 per month. Starting June 1, 2007 the rent was increased to \$720.00 per month in accordance with the provisions of the Act. The rental unit is a one bedroom apartment.

In summary, the tenant submitted that in October 2005 the ceiling in the bedroom started leaking and she had to sleep on a foam mattress in her living room for approximately six months until repair work was performed. The tenant received compensation from the landlord equivalent to one-half month's rent. On March 26, 2007 the bedroom ceiling started leaking again and this was reported to the landlord. During the summer months the amount of water diminished; however, the leak returned in October 2007. With a lack of adequate response to the tenant's complaints, the tenant called the City of Vancouver inspectors. Repair crews hired by the landlord or owner began working to repair the deck above the tenant's unit in July 2008 in an attempt to resolve the water leak. In September 2008 the leaking returned. As of the date of this hearing, the leaking continues when it rains and there is a large hole in the bedroom ceiling. A bucket remains beneath the hole which fills with dirty water that the tenant must empty on a regular basis. The tenant also testified that she has limited use her bedroom. Since a bucket must remain under the hole, the tenant is restricted to sleeping on a single bed instead of a larger bed, the tenant's sleep is disturbed by dripping water, silverfish have been seen in the bedroom and the tenant can smell smoke coming through the hole on occasion.

The tenant called a witness who occupies the rental unit above the tenant's unit. The witness testified that he had removed all of his property off his balcony in June 2008 as

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requested by the landlord in order to facilitate the repairs. The witness testified that the floor boards remain exposed and his balcony is not useable. The landlord explained that the floor boards have remained exposed intentionally in order to evaluate the repair issues.

The tenant submitted a detailed list of dates the landlord was contacted by the tenant or the tenant's housing advocate with respect to the leak and repairs. The tenant submitted photographs of her rental unit including photographs of the hole in the ceiling and the dirty water that accumulates in the bucket. The landlord did not dispute the list of dates contact was made with the landlord or the images captured in the photographs and I have accepted the documents to represent fact. The tenant confirmed that this application pertains to the water leak as described above and does not relate to any other matters. The tenant is seeking compensation equivalent to 25% of the rent payable for the months of November 2007 onwards and a 25% reduction in future rent payable until such time the repairs are completed.

The landlord submitted that since the initial leak in 2005 the landlord or the building owner had hired three contractors to try and fix the leak. Repair work to the building has included stripping and replacing water membrane and flashing on the balcony above the rental unit, caulking all visual cracks in the exterior of the building above the rental unit and repair or replacement of roof flashing. The landlord submitted that although the landlord and owner have made efforts to fix the water leak, the entry point of the water has been difficult to ascertain and the repairs are on-going. The landlord testified that the ceiling of the tenant's bedroom may have to be removed in an effort to determine where the water is infiltrating. Such a repair may require the tenant to vacate the rental unit and the landlord has tried offering the tenant one month's compensation in exchange for ending the tenancy. The tenant had refused the landlord's offer.

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The landlord submitted that the tenant had impeded the landlord's efforts to repair the leak by cancelling pre-arranged inspections and not responding to requests for inspection. The tenant testified that she denied access to the landlord on only occasion due to ill health. The tenant claimed that any message left for her by the landlord was forwarded to her advocate for follow up.

In objecting to the tenant's request for compensation of 25% of her rental payment, the landlord submitted that the tenant pays below market rent and had only received one rental increase since her tenancy commenced.

Analysis

Under section 32 of the Act, the landlord has the obligation to repair and maintain the rental unit and the residential property in a manner that complies with health, safety and housing standards. From the evidence before me, I am satisfied that the tenant notified the landlord of the leaks diligently and promptly. It is also evident to me that the landlord has made attempts to remedy the water penetration. Although the landlord's response could be viewed as slow or inadequate, I am satisfied that the landlord made reasonable attempts to tackle the most probable sources of water penetration. As the leak continues to persist it is obvious that the landlord must continue to seek the origin of the water leak and patch the ceiling in the tenant's bedroom. Therefore, I ORDER the landlord to perform the necessary repairs to stop the infiltration of water into the rental unit and patch the ceiling in the tenant's bedroom forthwith.

The tenant is entitled to quiet enjoyment of her rental unit under section 28 of the Act and I find that the tenant's ability to enjoy her rental unit has been impacted by the water leak that has not been adequately repaired. I am satisfied that the tenant has diminished use of her bedroom since a bucket must remain in the center of the room most times. I also accept the tenant's position that water dripping in the bucket disturbs

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her sleep and that she has the inconvenience of having to empty the bucket when it rains. As the tenant has diminished enjoyment of her rental unit, I find the tenant entitled to some compensation.

I did not find sufficient evidence that the tenant impeded the landlord's attempts to perform necessary repairs. I did not find that the lack of rent increases in the past to have a direct correlation to the loss of quiet enjoyment endured by the tenant and I reject the landlord's position that the tenant is essentially compensated by below market rent.

I found the tenant's request for compensation equivalent to 25% of her rent to be excessive given the tenant still has use of her bedroom, albeit diminished use. Also, I find it appropriate to reflect less inconvenience and a lesser degree of loss of quiet enjoyment during the drier spring and summer months in awarding the tenant compensation. Therefore, for the months of May to September the tenant is awarded compensation equivalent to 10% of the rent payable. For the months of October to April I award the tenant compensation equivalent to 20% of the rent payable.

Since the leak reappeared in March 2007, I grant the tenant's request for compensation from November 2007 onwards. In light of the above findings, the tenant's award for compensation is calculated as follows:

November 2007 through April 2008 ($\$720 \times 6 \times 20\%$)	\$ 864.00
May 2008 through September 2008 ($\$720 \times 6 \times 10\%$)	432.00
October 2008 through April 2009 ($\$720 \times 6 \times 20\%$)	<u>864.00</u>
Compensation for loss of quiet enjoyment	<u>\$ 2,160.00</u>

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The tenant is also authorized to reduce subsequent rent payments by 10% or 20%, depending on the month as outlined above, until such time the leak is repaired and the ceiling patched. When the repair is complete the rent payable returns to the amount full amount payable under the Act and tenancy agreement.

In satisfaction of the award of \$2,160.00, the tenant is authorized to further reduce subsequent rent payments until such time the award is realized. Where the tenant reduces her rent payments in satisfaction of this award, the landlord must consider the rent paid in full.

I do not award the filing fee to the tenant as the tenant did not pay a filing fee for this application. Other than the order that the landlord repair the leak and the tenant's ceiling forthwith, I make no other order to the landlord.

Conclusion

The landlord is ORDERED to repair the water leak and the tenant's bedroom ceiling forthwith.

The tenant is awarded compensation of \$2,160.00 for loss of quiet enjoyment of her rental unit from November 2007 until April 2009. The tenant is authorized to reduce subsequent rental payments until such time this award is realized.

The tenant is also authorized to reduce future rent payments by 10% or 20%, depending on the month as provided in the analysis, until such time the leak and the ceiling repairs are completed.



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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: May 05, 2009.

Dispute Resolution Officer